No. 2845

United States

Circuit Court of Appeals

For the Ninth Circuit.

DANIEL CALLAHAN,

Plaintiff in Error,

vs.

THE UNITED STATES OF AMERICA,

Defendant in Error.

Transcript of Record.

Upon Writ of Error to the United States District Court of the Territory of Alaska, Fourth Division.

Filmer Bros. Co. Print, 330 Jackson St., S. F., Cal.

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INDEX TO THE PRINTED TRANSCRIPT OF RECORD.

[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in italic; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in italic the two words between which the omission seems to occur.]

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Names and Addresses of Attorneys of Record.

R. F. ROTH, Attorney for Plaintiff and Defendant in Error,
Fairbanks, Alaska.

LEROY TOZIER, Attorney for Defendant and Plaintiff in Error,
Fairbanks, Alaska. [1*]

In the District Court for the Territory of Alaska, Fourth Division.

No. 713—CRIMINAL.

THE UNITED STATES OF AMERICA,
Plaintiff,

vs.

DANIEL CALLAHAN,
Defendant.

Praecipe for Transcript of Record.

The clerk of the court will please prepare and certify a copy of the record in this action as follows:

1. The indictment.
2. The bill of exceptions complete.
3. All journal entries connected with the trial, including the final judgment.
4. All papers connected with the writ of error, except the writ of error, the citation, order or orders extending time in which to file transcript in the Appellate Court, and the stipulation, if any, in regard

*Page-number appearing at foot of page of original certified Transcript of Record.

to printing record. The last-mentioned papers, being entitled in said Appellate Court, are to be forwarded to and filed there.

LEROY TOZIER,
Attorney for Defendant.

Service and receipt of copy admitted this 6th day of May, 1916.

R. F. ROTH,
United States District Atty.

[Indorsed]: Filed in the District Court, Territory of Alaska, 4th Div. May 6, 1916. J. E. Clark, Clerk. By Sidney Stewart, Deputy. **[2]**

[Caption and Title.]

Stipulation as to Printing Record.

It is stipulated between the attorneys for the parties respectively, that in printing the record in this case for use in said court, all captions should be omitted after the title of the cause has been printed, and the words "Caption and Title" and the name of the paper or document should be substituted therefor; also that after printing the indorsements and file-marks on the indictment, bill of exceptions, record in Appellate Court, the indorsements other than file-marks on all papers should be omitted, and the word "Indorsements" printed in lieu thereof.

All other parts of the record should be printed.

Dated May 6th, 1916.

LEROY TOZIER,
Attorney for Plaintiff in Error.
R. F. ROTH,
United States District Attorney, for Defendant in Error.

[Indorsed]: Filed May 6, 1916. [3]

[Caption and Title.]

Indictment.

DANIEL CALLAHAN is accused by the Grand Jury of the Territory of Alaska, Fourth Judicial Division, Territory of Alaska, for the regular February, 1916, term of the District Court, by this indictment of the crime of rape, committed as follows, to wit:

That the said Daniel Callahan on the twenty-fifth day of June, A. D. one thousand nine hundred and fifteen, at Fairbanks, in the Fairbanks Precinct, Fourth Judicial Division, Territory of Alaska, and within the jurisdiction of this court, did then and there wilfully, unlawfully and feloniously, carnally know and abuse one Grace Carey, a female child, under the age of sixteen years, to wit, of the age of fourteen years, he, the said Daniel Callahan being then and there a male person over the age of twenty-one years; contrary to the form of the statute in such case made and provided, and against the peace and dignity of the United States of America.

Dated at Fairbanks, in the Division and Territory

aforesaid, this 19th day of February, 1916.

R. F. ROTH,
United States Attorney.

A True Bill.

J. P. NORRIS,
Foreman of the Grand Jury.

The following are the names of the witnesses examined before the Grand Jury on the finding of the foregoing indictment: Marion Carey; Grace Carey; Joe Mock; Laura Herington; J. H. Miller.

[Endorsed]: No. 713—Cr. In the District Court, Ter. of Alaska, Fourth Division. United States of America vs. Daniel Callahan. Indictment for the Crime of Rape. A True Bill. J. P. Norris, Foreman Grand Jury. Presented to the Court by the Foreman of the Grand Jury in open court in the presence of the Grand Jury and filed in the District Court, Territory of Alaska, Fourth Division, Fairbanks, Alaska, Feby. 19, 1916. J. E. Clark, Clerk. By Sidney Stewart, Deputy. Secret, Without Bail. Charles E. Bunnell, District Judge. **[4]**

[Caption and Title.]

Order for Bench Warrant.

The United States Grand Jury having, on this 19th day of February, 1916, returned an indictment against the defendant named therein for the crime charged in said indictment, now, on application of the United States Attorney, R. F. Roth, made in open court,—

It is ordered that the clerk of this court may issue a bench warrant directed to the United States Marshal for the defendant named in said indictment, said defendant not to be admitted to bail.

CHARLES E. BUNNELL,
District Judge. **[5]**

[Caption and Title.]

Order Entering Attorney of Record.

Now, at this time, came R. F. Roth, United States Attorney for and in behalf of the Government; came also the defendant herein, in the custody of the United States Marshal, and upon request of defendant,—

IT IS HEREBY ORDERED that Leroy Tozier, Esq., be, and he hereby is, entered as attorney of record for defendant herein.

CHARLES E. BUNNELL,
District Judge. **[6]**

[Caption and Title.]

Arraignment.

Now at this time came R. F. Roth, United States Attorney, and Harry E. Pratt and Reed W. Heilig, Assistant United States Attorneys, for and in behalf of the Government; came also the defendant herein, in custody of the United States Marshal and with his attorney Leroy Tozier; the defendant was brought before the bar of the court and being asked if he is indicted by his true name and answering that he is, the said indictment was read to the defendant

by the clerk of the court, and a copy of said indictment delivered to him; the defendant asked time in which to plead, or otherwise move against the indictment, the time therefor was fixed at 2 o'clock P. M., Wednesday, February 23d, 1916.

CHARLES E. BUNNELL,
District Judge. [7]

[Caption and Title.]

Order Granting Permission to File Motion to Set Aside Indictment and Continuing Time to Plead.

2:00 P. M.

Now, at this time, came Harry E. Pratt and Reed W. Heilig, Assistant United States Attorneys; came also the defendant herein, in person, in the custody of the United States Marshal; with his attorney Leroy Tozier, Esq., and this being the time heretofore set for defendant to enter his plea herein, counsel for defendant now requests permission to file a motion to set aside the indictment and there being no objections, the Court took the matter under advisement and the time for defendant to enter his plea herein was continued to 10 o'clock A. M., Thursday, February 24th, 1916.

CHARLES E. BUNNELL,
District Judge. [8]

[Caption and Title.]

Order Granting Permission to File Motion to Set Aside Indictment.

Now, at this time, came R. F. Roth, United States Attorney, Harry E. Pratt and Reed W. Heilig, Assistant United States Attorneys, for and in behalf of the Government; came also the defendant herein, in the custody of the United States Marshal and with his attorney Leroy Tozier, Esq., and counsel for defendant having, on a prior day of this term, asked permission of the Court to file a motion to set aside the indictment herein, and the Court having considered the request of defendant's counsel.

IT IS ORDERED that said motion of defendant may be filed.

CHARLES E. BUNNELL,
District Judge. [9]

[Caption and Title.]

Motion to Set Aside Indictment.

Comes now the defendant above named and moves the Court to set aside the indictment herein, and for grounds of said motion alleges:

I.

That the Grand Jury which found and presented the alleged indictment herein did not have authority to inquire into crimes or present indictments because the said grand jury was not selected and summoned according to law nor were their proceedings conducted in the manner prescribed by the laws of the

United States or any laws applicable to the Territory of Alaska, and in particular, Chapter Four, of Title XV, Code of Criminal Procedure, Compiled Laws of Alaska.

II.

That the said indictment was not found, indorsed and presented as prescribed in Chapter Six of Title XV, Code of Criminal Procedure, Compiled Laws of Alaska, or any laws applicable to the said Territory of Alaska.

Dated February 23, 1916.

LEROY TOZIER,
Attorney for Defendant.

Service admitted February 23, 1916.

HARRY E. PRATT,
Asst. U. S. District Attorney.

[Endorsed]: Filed Feb. 24, 1916. [10]

[Caption and Title.]

Order Denying Motion to Set Aside Indictment.

Now, at this time, came R. F. Roth, United States Attorney; Harry E. Pratt and Reed W. Heilig, Assistant United States Attorneys, for and in behalf of the Government; came also the defendant herein, in the custody of the United States Marshal and with his attorney, Leroy Tozier, Esq., and defendant having filed a motion to set aside the indictment herein, the respective counsel herein submit said motion to the Court without argument, and the defendant and defendant's counsel both being present and not having produced or offered to produce to the Court any

evidence in support of said motion, and the Court having considered said motion.

IT IS ORDERED that the same be, and it is, hereby denied.

(CLERK'S NOTE: Defendant notes an exception to the ruling of the Court, which exception is allowed.)

CHARLES E. BUNNELL,
District Judge. **[11]**

[Caption and Title.]

Demurrer to Indictment.

Comes now, the defendant above named and demurs to the indictment herein, and for grounds of demurrer alleges:

I.

That it does not substantially conform to the requirements of Chapter Seven of Title XV, Code of Criminal Procedure, Compiled Laws of Alaska, in that it is not direct and certain.

II.

That the facts stated in said indictment do not constitute a crime.

Dated February 23, 1916.

LEROY TOZIER,
Attorney for Defendant.

Service admitted February 23, 1916.

R. F. ROTH,
U. S. District Attorney.

[Endorsed]: Filed Feb. 24, 1916. **[12]**

[Caption and Title.]

Hearing on Demurrer to Indictment.

Now, at this time came R. F. Roth, United States Attorney, Harry E. Pratt and Reed W. Heilig, Assistant United States Attorneys, for and in behalf of the Government; came also the defendant herein, in the custody of the United States Marshal and with his attorney, Leroy Tozier, Esq., and this being the time set to plead or otherwise move against said indictment, counsel for defendant herein now files his demurrer to the indictment herein, which was submitted without argument, and the matter taken under advisement by the Court.

CHARLES E. BUNNELL,
District Judge. **[13]**

[Caption and Title.]

Order Overruling Demurrer to Indictment.

Now, at this time, came R. F. Roth, United States Attorney, Harry E. Pratt and Reed W. Heilig, Assistant United States Attorneys; came also the defendant herein, in the custody of the United States Marshal and with his attorney, Leroy Tozier, Esq., and counsel for defendant herein, having on a prior day of this term filed a demurrer to the indictment herein, and the Court being fully advised in the premises.

IT IS ORDERED that the said demurrer be, and the same is, hereby overruled.

CHARLES E. BUNNELL,
District Judge. **[14]**

[Caption and Title.]

Plea of Not Guilty.

Now at this time came R. F. Roth, United States Attorney, Harry E. Pratt and Reed W. Heilig, Assistant United States Attorneys, came also the defendant herein, in the custody of the United States Marshal, and with his attorney, Leroy Tozier, Esq., and defendant having, on a prior day of this term, been duly arraigned, was asked by the Court if he is guilty or not guilty of the crime charged against him in the indictment, namely, that of rape, to which defendant says that he is not guilty and therefore puts himself upon the country, and the United States Attorney for and in behalf of the Government, doth the same, whereupon, the Court ordered that the plea of defendant be entered accordingly.

CHARLES E. BUNNELL,
District Judge. **[15]**

[Caption and Title.]

Order Setting Cause for Trial.

Now, at this time, came R. F. Roth, United States Attorney, Harry E. Pratt and Reed W. Heilig, Assistant United States Attorneys; came also the defendant herein, in the custody of the United States Marshal, with his attorney, Leroy Tozier, Esq., and,

IT IS ORDERED that the trial of this cause be, and the same is, hereby set for 10 o'clock A. M., Fri-

day, March 3d, 1916, to follow the trial of Cause No. 709–Cr.

CHARLES E. BUNNELL,
District Judge. **[16]**

[Caption and Title.]

Minutes of Court—March 22, 1916—Trial.

Now, at this time, this cause came on regularly for trial by jury, the defendant appearing in person and with his attorney, Leroy Tozier, Esq., and in the custody of the United States Marshal; came also R. F. Roth, United States Attorney, and Reed W. Heilig, Assistant United States Attorney, in behalf of the Government, and both sides announcing their readiness for trial, the following proceedings were had, to wit:

On the Court's own motion, the Court ordered that all persons of the general public, not properly having business before the Court, be excluded from the courtroom during the trial of this cause, to which ruling counsel for defendant notes an exception, which exception was allowed.

The clerk proceeded to draw from the trial jury box, one at a time, the names of the regular panel of Petit Jurors and, after said jurors were duly sworn as to their qualifications, the United States Attorney and counsel for defendant proceeded to duly examine said jurors, and exercise their challenges according to law.

Members of the regular panel of Petit Jurors excused for cause or peremptorily were excused until

10 o'clock A. M., Saturday, March 25th, 1916.

The hour for noon recess having arrived, and it appearing to the Court that the jury in said cause be kept together in charge of sworn bailiffs, S. T. Kincaid and R. K. Latimer were, in open court, **[17]** duly sworn as bailiffs in charge of said jury during the trial of said cause, whereupon, after being admonished by the Court, the said jury were excused, in charge of their sworn bailiffs,

Members of the regular panel of Petit Jurors not yet drawn, were also excused until 2 o'clock P. M.

CHARLES E. BUNNELL,
District Judge. **[18]**

[Caption and Title.]

Order to Supply Jurymen and Bailiffs With Meals and Lodgings.

Now, on this day, to wit, March 22d, 1916, it appearing to the Court that it is necessary that the jury now in process of formation or having under consideration the law and the evidence as given to them on the trial of the above-mentioned cause, should be kept together and free from communication or association with other persons and in constant charge of two officers of the Court, duly sworn;

IT IS NOW THEREFORE ORDERED that the said jury be assigned to the custody of two duly sworn bailiffs and that the U. S. Marshal for said Division and Territory provide the said jury and bailiffs with meals and lodgings at the expense of the United States until such time as the jurymen

have agreed upon their verdict or have been discharged by the Court.

CHARLES E. BUNNELL,
District Judge. **[19]**

[Caption and Title.]

Trial by Jury Continued.

Now, at this time, came R. F. Roth, United States Attorney, and Reed W. Heilig, Assistant United States Attorney, in behalf of the Government; came also the defendant in the custody of the United States Marshal, with his attorney Leroy Tozier, Esq., came also the jury in the box, in charge of their sworn bailiffs and the remaining members of the regular panel of petit jurors excepting those previously excused for cause in this case, and being called and all answering to their names as present, said trial was resumed and the following proceedings had, to wit:

Respective counsel continued to examine the jurors drawn and exercised their challenges according to law.

At 3:40 o'clock P. M. the jurors in the box, having been admonished by the Court, were excused in charge of their sworn bailiffs and Court declared recess until 3:55 P. M.

3:55 P. M.

Thereafter, at 3:55 P. M., came the defendant, in the custody of the United States Marshal; came the jurors heretofore excused in charge of their sworn

bailiffs, and the respective parties and attorneys as heretofore, whereupon said trial was resumed and the following proceedings had, to wit:

Respective counsel continued to examine the jurors drawn and exercise their challenges according to law, and it appearing to the [20] Court that the regular panel of petit jurors is exhausted and that the jury is incomplete, it is hereby ordered that the clerk of this court issue a writ of special venire directed to the United States Marshal of this Division and Territory, commanding him to summon from the body of the District, eight (8) men qualified to sit as jurors in this Court, said special venire returnable at 10 o'clock A. M. Thursday, March 23d, 1916.

Hereupon, the jurors in the box, having been duly admonished by the Court, were excused in charge of their sworn bailiffs, until 10 o'clock A. M., Thursday, March 23d, 1916.

CHARLES E. BUNNELL,
District Judge. [21]

[Caption and Title.]

Minutes of Court—March 23, 1916—Trial.

Now, at this time, came R. F. Roth, United States Attorney, and Reed W. Heilig, Assistant United States Attorney, came also the defendant in the custody of the United States Marshal, with his attorney Leroy Tozier; came also the members of the regular panel of petit jurors, except those previously excused for cause, the jurors in the box being in charge

of their sworn bailiffs and all of said jurors having been called and answered to their names as present, the following proceedings were had, to wit:

The United States Marshal returned into court the special venire heretofore issued and the members thereof, to wit: N. A. Shaw; Axel F. Carlsten; W. W. Sherrard; T. A. Parsons; R. S. Steele; J. H. Patton; Thos. Nerland; and Wallace Cathcart upon being called and answering to their names, the clerk proceeded to draw from the trial jury-box, one at a time, the names of the members of said special venire and the respective attorneys proceeded with the examination of said persons so drawn until each side was satisfied with the jury and the jury was complete and consisted of the following persons, to wit:

L. J. Heacock;	George Knapp;
E. H. Boyer;	John Solen;
H. U. Woodin;	R. J. Patterson;
Perry Willoughby;	R. S. Steele;
J. H. Patten;	Wallace Cathcart;
Chas. McDermott;	Ezra Buffington;

which said jury was duly sworn to try the issues in said cause.

Hereupon the jury having been duly admonished by the Court, were excused in charge of their sworn bailiffs.

CHARLES E. BUNNELL,
District Judge. **[22]**

[Caption and Title.]

Minutes of Court—March 23, 1916—Trial.

2:00 P. M.

Now, at this time, came R. F. Roth, United States Attorney and Reed W. Heilig, Assistant United States Attorney, in behalf of the Government; came also the defendant, in the custody of the United States Marshal, with his attorney Leroy Tozier, Esq., came also the jury heretofore sworn, in charge of their sworn bailiffs and being called and each answering to his name, the said trial was resumed and the following proceedings had, to wit:

Opening statement was made by R. F. Roth, United States Attorney, in behalf of the Government, counsel for defendant waiving statement.

Grace Carey, Laura Herington, Joe Mock, Marion Carey and J. J. Buckley were each duly sworn and testified in behalf of the Government.

Government rests.

Hereupon, the jury having been duly admonished, were excused in charge of their sworn bailiffs until 3:30 o'clock P. M.

3:30 P. M.

Thereafter, at 3:30 o'clock P. M. came the jury in the charge of their sworn bailiffs; came the defendant in the custody of the United States Marshal and the respective parties and attorneys as heretofore, and the jury having been stipulated present, said trial was resumed and the following proceedings had, to wit: **[23]**

Grace Carey was recalled and testified for the Government on cross-examination.

Govt. rests. Hereupon, the jury having been duly admonished were excused, in charge of their sworn bailiffs, until 10 o'clock A. M., Friday, March 24th, 1916.

CHARLES E. BUNNELL,
District Judge. **[24]**

[Caption and Title.]

Minutes of Court—March 24, 1916—Trial.

Now, at this time, came R. F. Roth, United States Attorney and Reed W. Heilig, Assistant United States Attorney, in behalf of the Government; came also the defendant in the custody of the United States Marshal with his attorney, Leroy Tozier, Esq., came also the jury heretofore sworn, in charge of their sworn bailiffs, whereupon said trial was resumed and the following proceedings had, to wit:

The jury were excused in charge of their sworn bailiffs, whereupon defendant made a motion that certain testimony of Laura Herington's be stricken from the record, which motion was denied by the Court.

Defendant moves the Court for an instructed verdict of not guilty which motion was denied.

Hereupon the jury returned into court, in charge of their sworn bailiffs, and it was stipulated by respective counsel that all were present.

Daniel Callahan was duly sworn and testified in his own behalf.

Mrs. Daniel Callahan and Dick Callahan were each duly sworn and testified in behalf of defendant.

Hereupon, the jury having been duly admonished, were excused in charge of their sworn bailiffs, and Court declared recess until 11:15 o'clock A. M. **[25]**

11:15 A. M.

Thereafter, at 11:15 o'clock A. M. came the defendant, in the custody of the United States Marshal; came the jury in charge of their sworn bailiffs and the respective parties and attorneys as heretofore, and it having been stipulated by respective counsel that said jury were all present, said trial was resumed:

H. J. McCallum was duly sworn and testified in behalf of defendant.

Defendant rests.

Grace Carey and Laura Herington were each recalled and testified for the Government in rebuttal.

The jury having been duly admonished, were excused in charge of their sworn bailiffs, until 2 o'clock P. M.

CHARLES E. BUNNELL,
District Judge. **[26]**

[Caption and Title.]

Minutes of Court—March 24, 1916—Trial.

2:00 P. M.

Now, at this time, came R. F. Roth, United States Attorney, and Reed W. Heilig, Assistant United States Attorney, in behalf of the Government; came also the defendant in the custody of the United

States Marshal with his attorney Leroy Tozier, Esq., came likewise the jury in charge of their sworn bailiffs, and being called and each answering to his name as present, said trial was resumed and the following proceedings had, to wit:

The jury having been duly admonished by the Court, were excused in charge of their sworn bailiffs until 2:15 o'clock P. M.

2:15 P. M.

Thereafter, at 2:15 o'clock P. M. came the jury in charge of their sworn bailiffs and it was stipulated by respective attorneys that all were present; came also the defendant in the custody of the United States Marshal and the respective attorneys and parties as heretofore, whereupon said trial was resumed and the following proceedings had, to wit:

Defendant rests.

Opening argument was made by R. F. Roth, United States Attorney in behalf of the Government, followed by argument by Leroy Tozier, Esq., in behalf of defendant. [27]

At 4:13 o'clock P. M., the jury having been duly admonished Court declared recess until 4:25 o'clock P. M., and said jurors retired in charge of their sworn bailiffs.

4:25 P. M.

Thereafter, at 4:25 P. M., came the jury in charge of their sworn bailiffs and it was stipulated by respective counsel that all were present; came also the defendant in the custody of the United States Marshal and the respective attorneys and parties as here-

tofore; and the following proceedings were had, to wit:

Argument was continued by counsel for defendant, Leroy Tozier, Esq.

At 4:50 o'clock P. M. the jury having been duly admonished were excused, in charge of their sworn bailiffs, until 7:30 o'clock P. M.

7:30 P. M.

Thereafter, at 7:30 o'clock P. M. came the jury in charge of their sworn bailiffs; and being called, each answered to his name as present; came also the defendant in the custody of the United States Marshal; came likewise the respective attorneys and parties as heretofore and the following proceedings were had, to wit:

Closing argument was made by R. F. Roth, United States Attorney.

Thereafter the Court duly instructed the jury as to the law in the premises, whereupon R. K. Latimer and S. T. Kincaid were each duly sworn as bailiffs in charge of said jury.

At 9:02 P. M. the jury retired in charge of their sworn bailiffs to deliberate upon their verdict.

CHARLES E. BUNNELL,
District Judge. [28]

[Caption and Title.]

Minutes of Court—March 25, 1916—Trial.

Now, at this time, came R. F. Roth, United States Attorney, and Reed W. Heilig, Assistant United States Attorney, in behalf of the Government; came

also the defendant in the custody of the United States Marshal with his attorney, Leroy Tozier, Esq., came likewise the jury heretofore sworn to try the issues in said cause, in charge of their sworn bailiffs, and being called and each answering to his name, the following proceedings were had, to wit:

The said jury, by and through their foreman, stated to the Court, in open court, that the jury is as yet unable to agree. The Court directed that the jury retire for further deliberation, whereupon said jury retired in charge of their sworn bailiffs.

CHARLES E. BUNNELL,
District Judge. **[29]**

[Caption and Title.]

Minutes of Court—March 25, 1916—Trial.

5:42 P. M.

Now, at this time, came R. F. Roth, United States Attorney; came also the defendant, in the custody of the United States Marshal with his attorney, Leroy Tozier; came likewise the jury heretofore sworn to try the issues in the above-entitled cause, in charge of their sworn bailiffs, and being called and each answering to his name as present, said jury did present, by and through their foreman, in open Court, their verdict in said cause which is in words and figures as follows, to wit.

"In the District Court for the Territory of Alaska, Fourth Judicial Division.

No. 713—CR.

THE UNITED STATES OF AMERICA,
Plaintiff,

vs.

DANIEL CALLAHAN,
Defendant.

VERDICT.

We, the jury, in the above-entitled action, duly impaneled and sworn, find the defendant Daniel Callahan guilty of the crime of rape, as charged in the indictment.

Dated: Fairbanks, Alaska, March 3/25, 1916.

L. J. HEACOCK,
Foreman."

—which said verdict was filed with the Clerk of the Court in open Court and defendant remanded to the custody of the United States Marshal to await sentence; the jury in this cause were excused from further deliberation and members of the special venire ordered discharged.

CHARLES E. BUNNELL,
District Judge. **[30]**

[Caption and Title.]

Verdict.

We, the jury in the above-entitled action, duly impaneled and sworn, find the defendant Daniel Calla-

han guilty of the crime of rape as charged in the indictment.

Dated: Fairbanks, Alaska, March 3/25, 1916.

L. J. HEACOCK,
Foreman.

Entered in Court Journal No. 13, page 473.

[Endorsed]: Filed Mar. 25, 1916. **[31]**

[Caption and Title.]

Motion for a New Trial.

Comes now the defendant in the above-entitled action and moves the Court to set aside the verdict of "Guilty" rendered herein against the defendant, upon the 25th day of March, 1916, and grant a new trial herein for the following reasons:

I.

Misconduct of the United States Attorney in his address to the jury in this case by using the following language:

> "You noticed that I challenged the statement of Mr. Tozier that Grace Carey testified that the last time that she was at the Callahan house was on the 25th day of June. I made that challenge of those statements, because my understanding was that she testified that that was the last time she had sexual intercourse with Dan Callahan, and I have not any doubt at all but that is what was intended, because there is no doubt but what Grace Carey had been to Callahan's house many times since. That is an immaterial matter. There is no doubt but what she had been

there many times since. And if I had understood that statement, why, of course, I would have had that corrected by testimony, because, if she had been there later—"

For the reason that the language of the prosecuting attorney above quoted, is improper in any criminal case; not based upon any evidence or reasonably deducible therefrom, and is calculated to inflame and prejudice the minds of the jury, and by reason of said language upon the part of the said prosecuting Attorney, the defendant was prevented from having a fair trial.

II.

Error of the Court at the trial and excepted to by the defendant in the admission of evidence, to wit:

For the error of the Court in overruling the objection of the defendant to the admission of the testimony of Laura Herington, for the reason that the same was incompetent, immaterial and wholly [32] inadmissible for any purpose or upon any correct theory applicable to this case, and was purely hearsay, and not binding upon this defendant; and to which overruling of the defendant's objection the defendant duly excepted.

III.

For error of the Court in overruling defendant's objection to the admission of the testimony of the witness Laura Herington as to a conversation between the witness Grace Carey and the witness Laura Herington, and particularly statements made by said Grace Carey to said Laura Herington immediately after the alleged commission of the alleged

offense, regarding where she, said Grace Carey, had been and certain money, to wit, the sum of three dollars she then had, and as to when and how she obtained the same; because said conversation and said statements were hearsay and not binding upon this defendant; to the admission of which testimony the defendant objected; which objection was overruled, to which the defendant duly excepted, as will more fully appear by the official stenographer's notes and record of the testimony of the said Laura Herington.

IV.

For the error of the Court in his ruling upon the motion of defendant to strike out all the testimony of the witness Laura Herington in this case; which motion was duly made by the defendant and overruled by the Court, and to which ruling the defendant then and there excepted.

V.

For the error of the Court in refusing to read and give the jury instructions Nos. One and Two, prepared and requested by the defendant, to be given by the Court in its charge to the jury, to which refusal the defendant duly excepted; which exceptions were allowed by the Court. [33]

VI.

For error of the Court in giving and reading to the jury instructions Nos. 20, 23, 24, and 25 of the Court's charge to the jury, for the reasons set out in defendant's exceptions to said instructions, which exceptions to said instructions were allowed by the Court.

VII.

Insufficiency of the evidence to justify the verdict of guilty, and because said verdict is against the law.

VIII.

For the reason that because of said errors of law occurring at the trial and excepted to by the defendant, and which more fully appears in the shorthand notes taken at the trial, the defendant herein was prevented from having a fair and impartial trial.

LEROY TOZIER,
Attorney for Defendant.

Service of the foregoing motion for a new trial admitted and a true copy thereof received this 27th day of March, 1916.

R. F. ROTH,
U. S. Attorney.

[Endorsed]: Filed Mar. 27, 1916. [34]

[Caption and Title.]

Motion in Arrest of Judgment.

Comes now the defendant above named, and moves the Court for an order that no judgment be rendered against the defendant herein upon the verdict of guilty returned by the jury against him upon the 25th day of March, 1916, notwithstanding said verdict, upon the ground and for the reason that the indictment herein does not state facts sufficient to constitute a crime, as is more fully and particularly set forth in the demurrer to said indictment filed

herein, to which reference is hereby made and made a part of this motion.

LEROY TOZIER,
Attorney for Defendant.

Service of the foregoing motion admitted and a true copy thereof received this 27th day of March, 1916.

R. F. ROTH,
U. S. Attorney.

[Endorsed]: Filed Mar. 27, 1916. [35]

[Caption and Title.]

Order Setting Motion for New Trial for Hearing.

Now, at this time, came R. F. Roth, United States Attorney, in behalf of the Government; came also the defendant in the custody of the United States Marshal and with his attorney Leroy Tozier, and defendant's motion for a new trial in this cause is hereby set for 7:30 o'clock P. M. Monday, April 3d, 1916.

CHARLES E. BUNNELL,
District Judge. [36]

[Caption and Title.]

Hearing on Motion for New Trial and Arrest of Judgment.

7:30 P. M.

Now, at this time, came R. F. Roth, United States Attorney, in behalf of the Government; came also the defendant herein, in the custody of the United

States Marshal, with his attorney Leroy Tozier, Esq., defendant's motion for a new trial and arrest of judgment in this cause coming on regularly for hearing before the Court and after argument by respective counsel herein, the matter was taken under advisement by the Court.

CHARLES E. BUNNELL,
District Judge. **[37]**

[Caption and Title.]

Order Denying Motion for New Trial and Fixing Time for Sentence.

Now, at this time, came R. F. Roth, United States Attorney and Harry E. Pratt and Reed W. Heilig, Assistant United States Attorneys, in behalf of the Government; came also the defendant, in the custody of the United States Marshal, with his attorney Leroy Tozier, Esq., and defendant's motion for a new trial herein having previously been argued before the Court and submitted, and the Court now having considered said motion and being fully advised in the premises.

It is ordered that said motion for a new trial in this cause be, and the same is, hereby denied, to which ruling defendant notes an exception, which exception is allowed;

And, it is hereby ordered that the time for pronouncing sentence on the defendant herein be, and the same hereby is, fixed at 10 o'clock A. M., Tuesday, April 11th, 1916.

CHARLES E. BUNNELL,
District Judge. **[38]**

[Caption and Title.]

Sentence Pronounced.

Now, at this time, this being the time heretofore fixed for the pronouncing of judgment and sentence upon the defendant herein, the defendant appearing in the custody of the United States Marshal, with his attorney, Leroy Tozier, Esq., and plaintiff being represented by R. F. Roth, United States Attorney, and Reed W. Heilig, Assistant United States Attorney; defendant was asked by the Court if he had anything to say why judgment and sentence should not be pronounced upon him, and having spoken in his own behalf, and the United States Attorney having addressed the Court upon the subject,

The Court thereupon pronounced judgment and sentence upon the defendant ordering and decreeing that the defendant, Daniel Callahan, be confined in the United States penitentiary at McNeil's Island, State of Washington, for a period of twelve (12) years.

Whereupon the defendant was remanded to the custody of the United States Marshal, for the execution of this sentence.

CHARLES E. BUNNELL,
District Judge. **[39]**

In the District Court for the Territory of Alaska, Fourth Judicial Division.

No. 713—CR.

UNITED STATES OF AMERICA,

Plaintiff,

vs.

DANIEL CALLAHAN,

Defendant.

Judgment.

Now, at this time, to wit, April 11th, one thousand nine hundred and sixteen, the same being one of the regular February, 1916, term days of this court, this cause came on regularly in open session, for the pronouncement of judgment and sentence of this Court upon the defendant, Daniel Callahan. The defendant appeared in person and by his attorney, Leroy Tozier, and the United States appeared by R. F. Roth, United States Attorney and Reed W. Heilig, Assistant United States Attorney.

It appears to the Court, and the Court so finds, that the defendant Daniel Callahan, was, by a lawful and regular grand jury for the aforesaid division, duly and regularly indicted upon the 19th day of February, 1916, and charged therein of the crime of rape alleged to have been committed upon the 25th day of June, 1915, at Fairbanks, Alaska, Fairbanks Precinct, Alaska, upon Grace Carey, a female child under the age of sixteen years, and the defendant being over the age of twenty-one years.

It further appears to the Court that the defend-

ant was duly and regularly arraigned upon said indictment and plead not guilty thereto; that upon the 22d, 23d and 24th days of March, 1916, the same having been theretofore regularly appointed as the time of trial in this case; a jury of twelve men was duly and regularly impaneled and sworn, evidence introduced on behalf of plaintiff and defendant, arguments of counsel had and the jury instructed by the Court as to the law of the case; That said jury **[40]** upon said 24th day of March, 1916, retired to consider its verdict and upon the 25th day of March, 1916, returned the same into court, which was in words and figures, as follows:

"*In the District Court for the Territory of Alaska, Fourth Judicial Division.*

No. 713—CR.

UNITED STATES OF AMERICA,

Plaintiff,

vs.

DANIEL CALLAHAN,

Defendant.

VERDICT.

We, the jury in the above-entitled action, duly impaneled and sworn, find the defendant, Daniel Callahan, guilty of the crime of rape, as charged in the indictment.

Dated Fairbanks, Alaska, March 3/25, 1916.

L. J. HEACOCK,

Foreman."

That thereafter, defendant's motions in arrest of judgment and for a new trial, were duly and regu-

larly overruled and now, upon this 11th day of April, 1916, the same having been heretofore regularly designated as the time for the pronouncement of the judgment and sentence of the Court and the defendant having been asked if he had anything to say why judgment should not be pronounced upon him, and having made a statement in his own behalf, and the Court being fully advised in the premises,

IT IS ADJUDGED that the defendant, Daniel Callahan, is guilty of the crime of rape as charged in said indictment and in accordance with the aforesaid verdict, and it is the judgment and sentence of the Court that the defendant, Daniel Callahan, shall be imprisoned in the United States penitentiary, at McNeil's Island, County of Pierce, State of Washington, for a period of twelve years, and the United States Marshal is ordered to deliver said defendant to said penitentiary, for the execution of this sentence.

Dated at Fairbanks, Alaska, this 11th day of April, 1916.

CHARLES E. BUNNELL,
District Judge. [41]

Entered in Court Journal No. 13, page 506. [42]

[Caption and Title.]

Motion for Order Allowing Supersedeas and Fixing Amount of Bond.

The defendant moves the Court for an order allowing a supersedeas in this case and fixing the amount of the bond, and providing that such bond,

when given and approved by the judge of said court, shall operate as a supersedeas and stay the further execution of the judgment and sentence herein.

The records and files in the case will be used at the hearing of this motion.

LEROY TOZIER,
Attorney for Defendant.

Service of the foregoing motion admitted and receipt of copy acknowledged this 1st day of May, 1916.

R. F. ROTH,
United States Attorney.

[Endorsed]: Filed May 1, 1916; May 6, 1916. [43]

[Caption and Title.]

Order Extending Time for Filing Petition for Writ of Error.

Now, at this time, Harry E. Pratt, Assistant United States Attorney, appearing in behalf of the Government and Leroy Tozier, appearing in behalf of the defendant and counsel for defendant having filed his proposed bill of exceptions herein, now moves the Court for an order extending the time within which to file petition for writ of error, assignment of errors and citation on appeal in this cause, and there being no objection.

It is ordered that the time within which to file petition for writ of error, assignment of errors and citation on appeal in this cause be, and the same is,

hereby extended to 2 o'clock P. M., Saturday, May 6th, 1916.

CHARLES E. BUNNELL,
District Judge. **[44]**

[Caption and Title.]

Bill of Exceptions.

This case came on regularly for trial in above-entitled court on Wednesday, March 22, 1916, at 10 o'clock A. M., Honorable Charles E. Bunnell, Judge presiding. The defendant and his attorney, Leroy Tozier Esq., and United States District Attorney R. F. Roth and Assistant United States Attorney Reed W. Heilig, are present. The attorneys for respective parties announce that they are ready for trial. The Court orders all persons who do not have business before the Court to be excluded from the courtroom during the trial, but allows litigants, witnesses, jurors, attorneys, officers of the court, and representatives of the newspapers to be present. Defendant, by his attorney, Leroy Tozier, excepts to the order of the Court and requests the Court to change the order and allow an open trial, which motion is denied by the Court, and an exception allowed.

Proceedings are taken to impanel a jury, and at 2 P. M. the Court takes a recess until 2 P. M., and under the order of the Court two bailiffs are sworn to take charge of the jurors in the box, and they are placed in charge of said bailiffs and admonished to not talk about the case, etc.

At 2 P. M. Court reconvenes and proceedings are resumed to impanel the jury, and the regular panel of petit jurors having [45] become exhausted, the Court orders a special venire to issue to the United States Marshal to summon from the body of the district eight special veniremen whom he believes to be qualified to serve as jurors, returnable to-morrow morning at 10 A. M. and orders the jurors in the box to be kept together in charge of the bailiffs, admonishes the said jurors in the usual way, and continues the trial until 10 A. M. to-morrow.

Court convenes at 10 A. M. March 23, 1916, when the defendant and his attorney, and the district attorney and his said assistant, and the jurors in the box, are present. The special venire is returned, whereupon proceedings are resumed to impanel a jury, and the jury is completed and sworn to try the case, and the Court takes a recess until 2 P. M. and the jury withdraw in charge of the bailiffs.

Court reconvenes at 2 P. M., when the defendant and his attorney and the United States attorney and his assistant, and the jury, are present in court. Whereupon the following proceedings were had:

Mr. TOZIER.—I would like permission to further examine juror Patton—a few questions is all.

Mr. ROTH.—We object, because he has already been sworn to try the case.

Mr. TOZIER.—It is a matter that came to my knowledge since 12 o'clock—since the recess.

Mr. ROTH.—The other jurors have been excused and it is a little late.

The COURT.—A juror may be examined any time

(Testimony of Grace Carey.)

as to his general qualifications. If you desire to examine him in the matter of his citizenship, or something of that kind— **[46]**

Mr. TOZIER.—That is not it, your Honor. That is not the matter I want to examine him about.

Mr. ROTH.—We object to it now, because the rest of the venire is excused and the jury is sworn to try the case.

(Objection sustained. Defendant excepts and is allowed an exception.)

Mr. Roth makes an opening statement of the case on behalf of the plaintiff, and the defendant by his attorney waives an opening statement, whereupon the following proceedings were had and testimony was taken. **[47]**

Testimony of Grace Carey, for Plaintiff.

GRACE CAREY, a witness for plaintiff, after being duly sworn, testified as follows, to wit:

Direct Examination.

(By Mr. ROTH.)

Q. What is your name? A. Grace Carey.

Q. How old are you, Grace? A. Fifteen.

(Defendant, by his attorney, objects to any testimony being offered in this case for the reason that the indictment herein does not state facts sufficient to constitute a crime; and for the further reason that the Grand Jury which found and presented the alleged indictment herein did not have authority to inquire into crimes or present indictments, because the said Grand Jury was not selected or summoned according to law, nor were their proceedings conducted

(Testimony of Grace Carey.)

in the manner prescribed by the laws of the United States or any laws applicable to the Territory of Alaska, and in particular Chapter 4, Title 15, Code of Civil Procedure, Compiled Laws of Alaska; and for the further reason that the said indictment was not found, indorsed and presented as prescribed in Chapter 6, Title 15, Code of Criminal Procedure, Compiled Laws of Alaska, or any laws applicable to the said Territory of Alaska. Which objection is overruled, and defendant asks and is given an exception.)

Q. When is your birthday? A. 23d of March.

Q. Is this your birthday? A. Yes, sir.

Q. How old are you to-day?

A. Fifteen years old.

Q. Are you acquainted with Daniel Callahan, the defendant? A. Yes, I am.

Q. Do you know where you were born, Grace?

A. Circle City, Alaska.

Q. Are you acquainted with a man by the name of Joe Mock? A. Yes, sir. [48]

Q. Just tell this jury if you went to the residence of the defendant Daniel Callahan at any time last year, last summer. A. Yes. I did.

Q. When was the last time you went there?

A. About the latter part of June. Around there somewhere.

Q. Do you remember the children's celebration here, the Midnight Sun Celebration? A. Yes.

Q. When they had a carnival here?

A. Yes. I do.

(Testimony of Grace Carey.)

Q. Was it before or after that time?

A. It was after that time.

Q. How long after it?

A. I don't know. Just a few days.

Q. Where had you been just before you went to Callahan's residence that day?

A. To the postoffice.

Q. When you left the postoffice, where did you start to go? A. I started over to Callahan's.

Q. Did you go to Callahan's right away?

A. No.

Q. Why?

A. Because Joe Mock was in the next yard and I didn't want him to see me go in.

Q. Did you get anything from Joe Mock at that time?

A. Yes. He gave me some pansies.

Q. After he gave you the pansies, where did you go? A. I went home.

Q. After you got home, then where did you go?

[49] A. I went back over to Callahan's.

Q. Did you go into the house? A. Yes. I did.

Q. Who was there?

A. Nobody was there but Dan.

Q. The defendant in this case? A. Yes.

Q. What did he do when you got in there, the first thing?

A. He locked the door and pulled down the blinds.

Q. Then what did you do? (Witness sobs.) What did you do? A. Laid down on the bed.

Q. Did you remove any of your clothes?

(Testimony of Grace Carey.)

(Defendant, by his attorney, objects to leading questions and suggestive questions being put to the witness. The Court directs the attorney for plaintiff to first proceed without asking leading questions.)

Q. State whether or not anything was done to your clothing.

(Defendant, by his attorney, objects as leading and suggestive, and the Court directs that what was done should be first stated.

Q. All right. Go ahead and state everything that was done as you remember it there, Grace.

(Defendant, by his attorney objects to the question; objects to the witness giving volunteer testimony as to what was done there, as the witness has not been shown incapable of answering direct questions. Objection to the question overruled, and defendant asks and is given an exception.)

A. Well, I went in and I took my drawers off and I went on the bed and then Dan got on top of me.

Q. Go ahead.

A. Then he had full sexual intercourse, and I got up and put my drawers back on and I went home. I went out the door and I met Laura Herrington just a little ways, and I showed her the three dollars that Dan gave me and I told her what he [50] gave it to me for, and I told her that he had pushed me for it.

Q. Did the defendant Dan Callahan have sexual intercourse with you before that time?

(Testimony of Grace Carey.)

A. Yes. Lots of times.

Q. When was the first time?

(Defendant objects as irrelevant, incompetent and immaterial. Objection overruled. Defendant asks and is given an exception.)

Q. When was the first time, Grace?

A. Before he went down to Ruby.

Q. How old were you?

A. I was only about nine years old, about ten; either nine or ten.

Q. Tell the jury who was the first man that ever had sexual intercourse with you?

(Defendant objects as irrelevant, incompetent and immaterial. Objection overruled, and defendant asks and is given an exception.)

A. Dan Callahan.

Q. Where did that occur?

A. Over to Dan Callahan's house.

Q. Did he give you anything particular after that?

A. Yes. He gave me twenty-five cents.

Q. Where else now, after that first time, did he have sexual intercourse with you?

A. Over at his barn, and at his house, and another little house right near the barn.

Q. In the town of Fairbanks? A. Yes.

Q. Did you ever tell anybody about this except Laura Herrington? A. No.

Q. Is she the only one? [51] A. Yes.

Mr. ROTH.—You may cross-examine.

(Testimony of Grace Carey.)

Cross-examination.

(By Mr. TOZIER.)

Q. Who told you to say that Dan Callahan had full sexual intercourse with you?

A. Mr. Roth told me the word; that was all.

Q. Mr. Roth told you the word.

A. Yes. I asked him the word.

Q. You asked him that word. A. Yes.

Q. When did you ask him that? A. To-day.

Q. You never knew that term before.

A. I never knew that word. No.

Q. Mr. Roth has seen you a good many times about this case, has he not? A. Why, yes.

Q. So, when you answered a while ago that you had never told anybody but Laura Herrington about it, you were mistaken, weren't you? You had told Mr. Roth about it, hadn't you?

A. I thought he meant if I had told anybody except the Grand Jury and him.

Q. How did you come to go up to Mr. Roth's office the first time you went up to his office?

A. Joe Miller came down after me and told me Mr. Roth wanted to see me.

Q. When was that? A. I don't know.

Q. How long ago? [52]

A. It has been over a month ago, I know.

Q. Before the Grand Jury met?

A. I don't know. Before I went in front of the Grand Jury is all I know.

Mr. TOZIER.—That is all.

Testimony of Laura Herrington, for Plaintiff.

LAURA HERRINGTON, a witness for plaintiff, after being duly sworn, testified as follows, to wit:

Direct Examination.

(By Mr. ROTH.)

Q. What is your name? A. Laura Herrington.

Q. How old are you? A. Fourteen years.

Q. Are you acquainted with the defendant Daniel Callahan? A. Yes, sir.

Q. Did you see Grace Carey the latter part of last June in the town of Fairbanks? A. Yes.

Q. Where were you living at that time? Where was your home at that time? A. In Fairbanks.

Q. Did you attend the celebration of the—children's celebration, the Midnight Sun Celebration?

A. Yes.

Q. With reference to that time, when was it that you saw Grace Carey, or can you fix the time?

A. No. I don't remember.

Q. I will ask you where you saw her? [53]

A. Coming from Dan Callahan's house.

Q. Where were you?

A. Coming up the street. I was by Petree's house.

Q. You were by Petree's house. A. Yes.

Q. In front of Petree's house? A. Yes.

Q. Just tell what occurred between you and Grace at that time.

(Defendant objects as incompetent, irrelevant and immaterial, not tending to prove or disprove any of the facts in this case. Objection overruled, and de-

(Testimony of Laura Herrington.)

fendant asks and is given an exception.)

Q. Go ahead now and state what was said and occurred between you and Grace at that time.

A. She showed me the money he gave her.

(Defendant moves to strike answer, plaintiff consents and the Court strikes out the answer.)

Q. Just state what Grace said to you, and what was done.

(Defendant objects, unless it is shown more clearly that it has a bearing upon the actions of this defendant and the witness Grace Carey who was formerly upon the stand; and in any event it would only be hearsay, and not binding upon defendant; that it is not corroborating evidence. Objection overruled, and defendant asks and is given an exception.)

Q. Go ahead.

A. She told me she did something with Dan to get the money.

(Defendant moves to strike answer. Motion denied, and defendant asks and is given an exception.)

Q. What money are you referring to?

A. The money he gave her.

(Defendant objects to the answer and moves that it be stricken. Motion denied, and defendant asks and is given an exception.)

Q. What did she show to you? Did she show you anything there?

(Defendant objects as leading and suggestive. Objection overruled. Defendant excepts. Exception allowed.) **[54]**

(Testimony of Laura Herrington.)

Q. Answer the question: Did she show you anything? A. Yes.

Q. What did she show you?

(Defendant makes the same objection. Objection overruled. Defendant asks and is given an exception.)

A. Three dollars.

Q. What did she say to you, the exact words that she said to you when she showed you the three dollars?

(Defendant objects as incompetent, irrelevant and immaterial. Objection overruled, and defendant asks and is given an exception.)

Q. Now, state the exact words she said to you.

(Defendant makes same objection; same ruling and exception allowed.)

A. She said he did something to her.

Q. Is that what she said? Is that the exact language she used? A. No.

Q. I want the exact language she used.

(Same objection by defendant; same ruling and exception.)

Q. State the exact language she used.

A. She said that Dan had pushed her.

(Defendant objects and moves to strike answer. Objection overruled, motion denied, and an exception allowed.)

Q. Did you ever have a conversation with Dan Callahan, the defendant in this case, in his house, about Grace Carey? A. Yes.

(Defendant objects for the further reason that it

(Testimony of Laura Herrington.)

does not tend to prove any of the facts at issue in this case, or disprove them. Objection overruled, and defendant asks and is given an exception.)

Q. When was that? How old were you when that conversation took place?

A. Twelve years old. [55]

Q. Just tell this jury what Dan Callahan said to you at that time about Grace Carey.

A. He said he did that to Grace and that she was not afraid.

(Defendant moves to strike the answer as not responsive to the question. Motion denied, and defendant asks and is given an exception.)

Mr. ROTH.—You may cross-examine the witness.

Cross-examination.

(By Mr. TOZIER.)

Q. You and Grace have talked this thing over quite a number of times, haven't you, Laura?

A. Yes.

Q. Talked it over as to what you were going to testify to here and as to what she was going to testify to.

A. Yes.

Q. You have talked it over with Mr. Roth, too, haven't you? A. Yes.

Q. And you girls also talked over about the money you were going to get for coming here, witness fees and such as that? A. Yes.

Q. That you were getting a nice thing out of these cases. You and Grace had that talk together?

(Plaintiff objects as irrelevant, incompetent and

(Testimony of Laura Herrington.)

immaterial. Objection sustained. Defendant excepts, and asks and is given an exception.)

Q. You and Grace have been very good friends for a long time, haven't you, Laura, ever since you have been little girls? A. Yes, sir.

Q. And you talked over about everything that occurs, do you, you and Grace, as girl chums do?

A. Yes. [56]

Q. And you tell her things and she tells you things. Is that it? A. Yes.

Q. You were living on Ester Creek when you say you met Grace over there by Petree's residence, were you? A. No. I didn't say that.

Q. But you were living on Ester Creek, were you not, at that time? A. No.

Q. Weren't you living there last summer in June, that is, the summer of 1915?

A. Yes. I was living there then.

Q. You were living there on Ester Creek then?

A. Yes, sir.

Q. How came you to be in town at that particular time when you say you met her?

A. I came in for the carnival.

Q. Was this just before the carnival or just after the carnival that you met Grace there?

A. I don't remember.

Mr. TOZIER.—That is all.

Mr. ROTH.—That is all.

Testimony of Joe Mock, for Plaintiff.

JOE MOCK, a witness for plaintiff, after being duly sworn, testified as follows, to wit:

Direct Examination.

(By Mr. ROTH.)

Q. What is your name? A. Joe Mock.

Q. Are you acquainted with Daniel Callahan, the defendant in this case? A. Yes, sir. **[57]**

Q. Are you acquainted with Grace Carey?

A. Yes, sir.

Q. Where were you on the 25th day of June, 1915, between 12 and 1 o'clock?

A. I was in front of Mr. Healey's house, in the garden, watering the plants.

Q. Where did you first see Grace Carey at that particular time?

A. She was coming up from Barnette Street towards—well, towards where I was.

Q. Now, on the corner there, upstream from the Healey house, whose residence is it on the corner?

A. Next to Healey's?

Q. No. Upstream on the corner of the street whose house is that; up this way from Healey's on the corner, whose house is that?

A. Mr. Carey's. You mean upstream?

Q. Yes.

A. Oh, Callahan's.

Q. Is Callahan's on the corner?

A. No. Dave Petree's.

Q. Mr. Dave Petree's is on the corner, then whose is the next one down? A. Callahan's.

(Testimony of Joe Mock.)

Q. And the next one— A. It is Jack Healey's.

Q. Now, where did Grace Carey go when you first saw her? How did she go?

A. Well, she came walking up there towards—as far as Callahan's place, then she kind of stalled; then she came over to me and got some flowers. [58]

Q. What kind of flowers? A. Pansies.

Q. Did you give them to her? A. Yes, sir.

Q. Where did she go from there?

A. Well, she still stalled around there.

Q. Where did she go after she left there?

A. I didn't see that—where she went to, because I went away.

Q. Where did you go?

A. I went across right down towards Second, between Healey's warehouse and Bert Smith's residence.

Q. Now, at the time that Grace Carey came along there, do you know where the defendant Dan Callahan was?

A. He was sitting in front of his house on the porch.

Q. Did you notice his windows before you left and went down Second Street? A. Yes.

Q. How were the curtains?

A. Some of them was up.

Q. How long were you gone when you went down towards Second Street?

A. Oh, maybe about ten minutes. I don't know but what more.

Q. Did you come back? A. Yes, sir.

(Testimony of Joe Mock.)

Q. Did you see any change at the Callahan house when you came back? A. Yes, sir.

Q. What did you see?

A. All the curtains down, all the blinds.

Q. Did you notice where Callahan was then?

A. I didn't see him.

Q. No. And what did you do immediately after that, when you [59] saw those curtains down?

A. I went down town.

Q. What was your purpose in going down town?

(Defendant objects as irrelevant, incompetent and immaterial, having no bearing on this case whatever. Sustained.)

Q. Well, after you came down town, how long did you stay down town?

A. Oh, maybe fifteen or twenty minutes.

Q. Where did you go then?

A. I went back up home to the cabin.

Q. To which cabin?

A. I had to go right through Mr. Healey's place to get back to my cabin.

Q. What did you see at the Callahan house then?

(Defendant objects as irrelevant, incompetent and immaterial. Objection overruled. Defendant excepts. Exception allowed.)

A. The blinds were still down.

Q. Still down? A. Yes, sir.

Q. Then where did you go?

A. I went down town.

Q. How long did you stay down town?

A. It might have been twenty or thirty minutes.

(Testimony of Joe Mock.)

Q. Did you go back to the Callahan house again?

A. Yes.

Q. What did you see there then?

A. The blinds were still down.

Q. Still down? A. Yes, sir.

Q. Did you see the Callahan house again after that?

A. Then I didn't see it for some time. [60]

Q. Well, some time. How long would that be?

A. Oh, maybe an hour after that.

Q. Well, what did you see then when you saw it?

(Defendant objects as incompetent, irrelevant and immaterial. Overruled. Defendant excepts. Exception allowed.)

A. Well—(Interrupted).

Q. About the blinds, what did you see?

Mr. TOZIER.—We object.—(Interrupted).

A. They were up.

Mr. TOZIER.—(Continuing.) —to the district attorney suggesting. That is leading and suggestive.

The COURT.—The question is answered.

Mr. ROTH.—Q. Did you see the defendant at that time—Callahan? A. No. Not that time.

Q. When did you see Callahan the first time after you saw him sitting on the porch there, and where did you see him?

A. I met him down town. It was either on Second or Third Street as I came up the third time.

Q. What date was that, do you say?

A. The 25th.

(Testimony of Joe Mock.)

Q. 25th of what month? A. 25th of June.

Q. What year? A. 1915.

Mr. ROTH.—You may cross-examine.

Cross-examination.

(By Mr. TOZIER.)

Q. You and Callahan have been having considerable trouble, Mr. Mock, haven't you, here lately?

A. I don't see that I had any trouble. **[61]**

Q. But Callahan has been objecting to your employment by the city?

A. That was his play, not mine.

Q. You understood that, didn't you, Joe?

A. Yes.

Q. And along about that time he was objecting to your employment by Chief Wiseman, wasn't he?

A. He has been doing that right along.

Q. You lived out there in Callahan's cabin for a while, didn't you—back? A. I did.

Q. And you don't like Callahan very well, do you?

A. I had nothing against him.

Q. No? A. No.

Q. You feel perfectly friendly towards him?

A. I always feel the same as usual to him.

Q. What?

A. Always treat him the same as usual.

Q. You always treat him the same as usual.

A. Yes, sir.

Q. Do you believe in the sanctity of an oath, Joe?

A. Yes, sir.

Q. You do. You believe in our form of Government? A. Yes, sir.

(Testimony of Joe Mock.)

Q. You haven't had any trouble at all with Callahan personally, have you? A. Not on my account.

Q. Not on your account? A. No. [62]

Q. Well, on his account, wasn't it?

A. The trouble all started from his side.

Q. He was the one that was to blame for everything.

A. He wanted to start trouble. I had nothing to start.

Q. You would kind of like to see him convicted?

A. I would like to see anyone convicted that oversteps the law.

Q. That oversteps the law. A. Yes.

Q. Particularly Callahan?

A. Not necessarily.

Q. Not necessarily. I think that is all, Joe.

Mr. ROTH.—That is all.

Mr. TOZIER.—I would like to have this witness recalled. (Witness resumes the witness-stand.)

Q. What kind of curtains were those over at Callahan's house? A. Were what?

Q. What kind of curtains were those over at Callahan's house, on the order of these that roll down and up? A. Yes, sir, he had some of those.

Q. He had some of those. A. Yes.

Q. Did you go all around the house and look at all the curtains? A. No, sir.

Q. You just looked at the curtains on that side—

A. On the side and the front.

Q. —on the side next to Healey's?

A. On the side next to Healey's and the front. [63]

(Testimony of Joe Mock.)

Q. Have you noticed the curtains there lately?

A. No.

Q. Do you know whether the same curtains are there now as were there on the 25th of June when you say you noticed them?

A. I have not paid any attention to them.

Q. Isn't it a fact that there are none of these roller curtains on that side of the house?

A. If they are changed I can't help it.

Q. Don't you know they were not there then—roller curtains? A. They were there then.

Q. Green curtains? Roller curtains?

A. I don't know if they were roller or not roller, but they were shades.

Q. What color along there?

A. I couldn't say what color.

Q. You don't remember that? A. No.

Q. You don't remember whether the curtains dropped down from the side or rolled down from the top.

A. They looked to be regular shade curtains.

Q. Like regular shades, like these roller curtains here? A. Yes, sir.

Q. How many of those curtains did you notice, Joe?

A. I noticed on that side of the house, and the front.

Q. What time of day did you say that was?

A. It was between twelve and one.

Q. Twelve and one o'clock in the daytime?

A. Yes, sir.

(Testimony of Joe Mock.)

Q. What kind of a window was that on the side of the house [64] next to Healey's house? That would be the west side of the house.

A. There is two windows there.

Q. Two windows there?

A. On the side towards Healey's.

Q. Do you know how many rooms are in Callahan's house? A. Yes.

Q. Do you know how many rooms were in Callahan's house on the 25th day of June, 1915?

A. No. I did not.

Q. And you say there are two windows on the side next to Mr. Healey's residence. A. Yes, sir.

Q. What size windows are they there?

A. One is a—there is one what they call a bedroom window. It is high up, with one glass.

Q. Just one pane of glass?

A. One pane of glass.

Q. About what size would you say that is, Joe?

A. It might be about 24 by 4 feet or 5 feet.

Q. You don't mean 24 feet?

A. No. No. 24 inches wide.

Q. 24 inches. A. Yes, sir.

Q. What kind of a window is the other window?

A. Just a common window. Just one sash.

Q. Just one sash. Is it a small window or a large window? A. Well, four lights.

Q. Four panes of glass, you mean?

A. Four panes of glass.

Q. Would that be the front window or the back window? [65]

(Testimony of Joe Mock.)

A. That would be the back window.

Q. Do you know if the curtains on this front window was a green sash curtain like these here in the courtroom, that is, of that color?

A. Well, I couldn't say for sure it was green.

Q. You don't know what color the other was on the back window?

A. No. They seemed to be light.

Q. Do you know whether the front window is a window of one room and the back window of another room, or are they both windows of one room?

A. They used to be of a room separate.

Q. They used to be for two separate rooms.

A. Yes.

Q. What kind of windows were the front windows, Joe? A. The front window?

Q. Yes.

A. Well, one there is a full-size window, two sashes.

Q. They are one pane windows?

A. Two sashes.

Q. You mean two panes of glass, one above the other?

A. Two sashes of regular common window, something like those. (Indicating windows in courtroom.)

Q. There are two panes of glass in them, I mean. A pane of glass in each sash; two sashes with a pane of glass in each sash?

A. I don't know for sure if there was one pane or two panes in each sash. I think there are two panes or more.

(Testimony of Joe Mock.)

Q. You think there are two panes in each sash.

A. Yes, sir.

Q. And there are two sashes.

A. Two sashes, similar to the windows here. [66]

Q. In the courtroom. A. Yes.

Q. Not as large as them, however?

A. No. A smaller size.

Q. But similar in construction to these windows.

A. Yes, sir.

Q. How many front windows are there, Joe?

A. There are two.

Q. Two front windows. A. Yes, sir.

Mr. TOZIER.—I think that is all, Joe.

Mr. ROTH.—That is all.

Testimony of Marion Carey, for Plaintiff.

MARION CAREY, a witness for plaintiff, after being duly sworn, testified as follows, to wit:

Direct Examination.

(By Mr. ROTH.)

Q. What is your name? A. Marion Carey.

Q. Are you the father of Grace Carey?

A. I am.

Q. The witness who was just on the stand here this forenoon? A. Yes, sir.

Q. How old is she?

A. She is fifteen years old to-day, the 23d day of March.

Q. Was she ever married? A. No, sir.

Q. She is not the wife of the defendant Dan Callahan, then? A. No, sir.

Q. Where was she born? [67]

(Testimony of Marion Carey.)

A. Circle City.

Mr. ROTH.—You may cross-examine.

Cross-examination.

(By Mr. TOZIER.)

Q. She was born, then, on the 23d day of March, 1901. A. Yes, sir.

Q. At Circle City, Alaska. A. Yes, sir.

Mr. TOZIER.—That is all, Mr. Carey.

Testimony of J. J. Buckley, for Plaintiff.

J. J. BUCKLEY, a witness for plaintiff, after being duly sworn, testified as follows, to wit:

Direct Examination.

(By Mr. ROTH.)

Q. Mr. Buckley, what official position do you hold in the city of Fairbanks?

A. Municipal Clerk and magistrate and Chief of the Fire Department.

Q. Do you know where the residence of Dan Callahan in the town of Fairbanks is? A. Yes, sir.

Q. Is that in the Fourth Judicial Division, Territory of Alaska? A. Yes, sir.

Q. As clerk of the town of Fairbanks, city clerk of the town of Fairbanks, I will ask you to state whether you have the record of registration of voters? A. I have.

Q. Have you in your possession now the registration of the defendant Daniel Callahan? [68]

A. I have.

Q. The last time that he registered in the city?

A. Yes.

Q. Will you please turn to it? (Witness opens a

(Testimony of J. J. Buckley.)

book.) What date does that bear?

A. The 6th day of January, 1916.

Q. Is it signed? A. Yes, sir.

Q. By whom? A. Dan Callahan.

Q. Do you know his handwriting?

A. Yes, sir.

Q. Did he sign that? A. Yes, sir.

Q. Did you see him sign it? A. Yes, sir.

Q. Is it sworn to? A. Yes, sir.

Q. Before whom? A. Myself as Magistrate.

Q. Does that affidavit disclose the age of Dan Callahan? A. Yes, sir.

Q. What age? A. Fifty-one years.

Mr. ROTH.—That is all. You may cross-examine.

Mr. TOZIER.—No questions.

Mr. ROTH.—The Government rests.

(Recess until 3:30 P. M. to-day at request of attorney for defendant, and jury withdraw in charge of bailiffs, with the usual admonitions. After recess, at 3:30 P. M. March 23, 1916, jury, and defendant and his attorney, and district attorney present, and trial resumed.) **[69]**

Mr. TOZIER.—I would like to have the witness Grace Carey recalled for further cross-examination.

The COURT.—Very well.

Testimony of Grace Carey, for Plaintiff (Recalled—Cross-examination).

GRACE CAREY, witness for plaintiff, heretofore sworn, takes the stand for further cross-examination.

(Testimony of Grace Carey.)

(By Mr. TOZIER.)

Q. Grace, how long were you in Callahan's house?

A. I don't know.

Q. I mean on the 25th day of June?

A. I don't know.

Q. Was it a very, very long time or a short time?

A. Well, I think it was a short time.

Q. A very short time, was it not? Just a few minutes, wasn't it, Grace?

A. I couldn't say. I don't know.

Q. Well, haven't you some recollection of it, Grace? A. It wasn't a very short time.

Q. Would you say it was ten minutes?

A. I couldn't say.

Q. What is it? A. I couldn't say.

Q. Fifteen minutes? That is a quarter of an hour.

A. Yes, it was about fifteen or ten minutes.

Q. About ten or fifteen minutes?

A. Yes. It was.

Q. It wasn't any longer than that; it wasn't a half hour? A. No.

Q. Nor anything like that. It was not anything like half an hour? A. No.

Q. It was about ten or fifteen minutes you think. You just went [70] right in and something was done, and you came right out? A. Yes.

Q. That was all, was it? I think that is all, Grace.

Redirect Examination.

(By Mr. ROTH.)

Q. He says, "Something was done." Just tell

(Testimony of Grace Carey.)

further, while you are on the stand, how—you stated that the curtains were drawn. Just tell the jury how those windows were covered.

(Defendant objects as not proper redirect examination. Mr. Roth asks permission to ask the question even though it might not properly be redirect. Permission granted by the Court. Defendant excepts, and is given an exception.)

Mr. ROTH.—Q. Just tell the jury how the windows were covered.

A. He covered them with a shawl or a blanket. I don't know which it was.

Q. Which—(Interrupted).

A. The one window.

Q. The one window?

A. Yes. On that side of the house. (Indicating with her arm.)

Q. And the other windows, how were they?

(Defendant objects unless witness states she knows.)

Q. (Continuing.) If she knows.

A. The other ones had blinds on them.

Q. As I understand, one was covered either with a shawl—(Interrupted).

A. Or a blanket.

Q. Or a blanket, and the other curtains were drawn. A. Yes.

Mr. ROTH.—That is all.

(By Mr. TOZIER.)

Q. How many windows are there there? [71]

(Testimony of Grace Carey.)

A. I don't know.

Q. You don't know how many there are.

A. I know there are two—(Interrupted).

Q. You didn't know at that time—(Interrupted).

Mr. ROTH.—She was answering there were two—(Interrupted).

A. There was two on one side, and one in the front on one side and one on the other, and none on the other side, and some in the kitchen.

(Mr. TOZIER.)

Q. That is your description of the house you are—(Interrupted.)

A. You asked me how many windows.

Q. You don't mean now those are windows he covered?

A. He covered two windows in the front room and two in the bedroom.

Q. With a blanket or what?

A. He covered one with a blanket in the front room, and the others with blinds.

Q. The rest with blinds. A. Yes.

Q. The one on the side, was that covered with a blanket or a blind? A. With a blanket or shawl.

Q. That is the one on the side next to the Healey house? A. Yes.

Q. There was no curtain on that window, was there? A. No.

Q. No curtain of any kind? A. No. **[72]**

Q. That window was just completely bare, was it?

A. Yes.

Q. And the ones in front, you say, were the ones

(Testimony of Grace Carey.)

that the blinds were on. A. Yes.

Q. So that the one that was next to the Healey house had no blinds on it, and he just covered that with a shawl or blanket. A. Yes.

Q. And you don't remember what that was. Is that right? A. Yes.

Mr. TOZIER.—That is all.

Mr. ROTH.—That is all.

(Trial continued until 10 A. M. to-morrow, and the jury, after being admonished by the Court as usual, withdrew from the courtroom in the charge of the two bailiffs.) **[73]**

March 24, 1916, 10 A. M.

Defendant and his attorney, and the District Attorney and the jury present in court, and trial resumed.

Mr. ROTH.—The Government rests.

(Mr. Tozier requests that jury withdraw, as he desires to present a motion, whereupon the Court orders the jury to withdraw to the jury-room, which they do in charge of the bailiffs, after being admonished as usual by the Court.)

Mr. TOZIER.—The defendant now moves that the evidence of the witness Laura Herrington, in so far as the same relates to any conversation she may have had with the witness Grace Carey, testified as having occurred on the 25th day of June, 1915, regarding the relation or relations of the witness Grace Carey with this defendant Daniel Callahan as having occurred on the said 25th day of June, and in particular that part of the conversation oc-

(Testimony of Grace Carey.)

curring between the witness Laura Herrington and the witness Grace Carey, wherein the witness Laura Herrington, testified that Grace Carey showed her, Laura Herrington, three dollars and made the remark that she had received the three dollars from this defendant, Daniel Callahan, and that the said Daniel Callahan had pushed her, should be stricken from the record and the jury instructed to disregard said testimony, for the reason that the same is mere gossip, hearsay, and could have no bearing upon this case, and serves to prejudice the rights of the defendant, Daniel Callahan, in this case.

(Motion denied. Defendant asks and is given an exception.)

The defendant Daniel Callahan now moves the Court to instruct the jury to return a verdict of not guilty in this case, for the reason that the Government has failed to prove the material elements of the indictment herein, and that no crime has been proved. [74]

(Motion denied. Defendant asks and is given an exception.)

(The jury return into court, and the trial proceeds.)

Testimony of Daniel Callahan, for Defendant.

DANIEL CALLAHAN, defendant, a witness in his own behalf, after being duly sworn, testified as follows:

Direct Examination.

(By Mr. TOZIER.)

Q. Mr. Callahan, you are the defendant in this

(Testimony of Daniel Callahan.)

case. A. Yes, sir.

Q. You reside at the town of Fairbanks, Alaska.

A. Yes, sir.

Q. How long have you resided at Fairbanks?

A. Since 1903.

Q. Continuously at Fairbanks since that time?

A. Yes, sir.

Q. You mean by that, that your home has been in Fairbanks,— A. Yes, sir.

Q. —since the year 1903. A. Yes, sir.

Q. What is your age, Mr. Callahan?

A. Fifty-one years old.

Q. Fifty-one years past? A. Yes, sir.

Q. When was your birthday?

A. 12th day of August.

Q. You were fifty-one years of age on the 12th day of August, 1915. A. Yes, sir.

Q. Do you know the witness Grace Carey that appeared here yesterday in this case?

A. Yes, sir. **[75]**

Q. Do you know the witness Laura Herrington that appeared here yesterday in this case?

A. Yes, sir.

Q. Do you know the father and the mother of the witness Grace Carey? A. Yes, sir.

Q. What is the blood of the mother of Grace Carey? A. Indian.

Q. What is the blood of the mother of Laura Herrington? A. Indian.

Q. Did you see the witness Grace Carey on the 25th day of June, 1915? A. I don't know.

(Testimony of Daniel Callahan.)

Q. By that, do you mean that you do not remember as to the date? A. Yes, sir.

Q. Did you see the witness Grace Carey after the 25th day of June, 1915? A. Yes, sir.

Q. Where did you see her?

A. Well, I have seen her mostly every day one place and another.

Q. She lives back of your house, on Fourth Avenue. A. Yes, sir.

Q. Does she come to your house frequently?

A. Yes, sir.

Q. She was there both before and after the 25th day of June, coming and going? A. Yes, sir.

Q. She is acquainted with your wife, Mrs. Callahan. A. Yes, sir. **[76]**

Q. You live with your wife at your residence in Fairbanks, do you? A. Yes.

Q. How long have you been married, Mr. Callahan, to your present wife?

A. About fifteen years or sixteen. Fifteen years. Sixteen years.

Q. She is also an Indian woman, is she not?

A. Yes, sir.

Q. Has she been living continuously with you at your residence in Fairbanks, Alaska, since the year 1903 or 1904?

A. Well, not continuously. She has been on a visit to her daughter over in Circle City either twice, I think, or three times.

Q. She has lived with you as your wife during all of that time. A. Yes, sir.

(Testimony of Daniel Callahan.)

Q. Her residence has been there with you.

A. Yes, sir.

Q. And you and she have been occupying the relation of husband and wife.You have been living together as husband and wife. A. Yes, sir.

Q. And does she now live at your residence on Third Avenue in Fairbanks? A. Yes, sir.

Q. Your wife is also acquainted with the witness Grace Carey? A. Yes, sir.

Q. Were they friendly or otherwise? Do you know? A. Friendly, I suppose.

Q. You heard the evidence of Grace Carey given here yesterday that she came to your house on the 25th day of June, 1915; [77] that you had sexual intercourse with her; that you gave her the sum of three dollars as payment for that sexual intercourse; and that she left your house soon thereafter. Is that true or untrue? A. Untrue. Untrue.

Q. You heard her testimony yesterday that she had sexual intercourse with you when she was ten or nine years of age, and that you were the first man that ever had sexual intercourse with her; and that at that time she testified that she had sexual intercourse with you the first time, as she stated, you gave her the sum of twenty-five cents. Is that true or untrue? A. Untrue, sir.

Q. You heard her testimony that she, since having had intercourse with you the first time as she testified, had frequently had sexual intercourse with you in a cabin, in a barn, and I am not sure but some other place in the town of Fairbanks. Was that tes-

(Testimony of Daniel Callahan.)

timony true or untrue?

A. It is untrue and impossible.

Q. Have you ever had sexual intercourse with the witness Grace Carey? A. No, sir.

Q. You stated that it was impossible for you to have sexual intercourse with her. Why do you so state?

A. I have not had sexual intercourse with a woman since I was hurt about—(Interrupted).

Q. What do you mean by "when you were hurt"?

A. I fell here about six years ago.

Q. Whereabouts were you?

A. I fell down at the brewery. [78]

Q. Which brewery?

A. Down at the lower brewery, down below here, when it was running.

Q. Was that the brewery known as the Greenland brewery? A. Yes, sir.

Q. Situate at the extreme lower part of town?

A. Yes, sir.

Q. What was the occasion, you say, of your falling there?

(Plaintiff objects.)

Q. What caused the fall, I mean.

A. Well, I was down there after some malt, and I drove around to the spout. There is a man who is living here now, named Wiener. He was shoveling the malt out from up above in the brewery, and he called me for something,—I didn't know what it was. I couldn't hear from where I was very well what it was—and asked me to come up, and I went

(Testimony of Daniel Callahan.)

up to where he was shoveling this out of a vat that was there. And as you go up the stairs and over to where the vat was, there was a runway of about maybe three feet, and it was just after they had got done their brew and they were washing kegs and cleaning out the vats and such stuff with warm water, and it was all steamy, and when I had the conversation—I don't just remember, but I think it was something about wood. I can't just remember what the conversation was—and when I turned around to go back the steam was so much that I stepped off of this and fell, and I suppose it must have been ten or twelve feet, and as I was going down I grabbed something on the side of the wall and kind of broke the fall and turned my shoulder out, and then I fell on some beer kegs that were below. **[79]**

Q. Where did you strike on those beer kegs with regard to your body? A. I struck on my back.

Q. What injury did you receive from that fall?

A. I turned my shoulder out, and then I hurt myself across the small of the back, the spleen it is called.

Q. What result do you now suffer from that fall as regards your shoulder, if anything? (Objected to. Overruled.)

A. My shoulder is stiff. I can work her this way (indicating), but I can't get it higher up than that. (Showing.)

Q. Can you raise your right arm as high as your head? (Witness raises left arm.) No. But your right arm.

(Testimony of Daniel Callahan.)

A. I can shove it up this way. (Showing.)

Q. Did you have your injuries treated after you had fallen there? A. Yes, sir.

Q. What physician treated you, Mr. Callahan?

A. Doctor Sutherland and Doctor Pohl.

Q. Doctor Emil Pohl, formerly a physician here in Fairbanks? A. Yes, sir.

Q. Do you know where Doctor Pohl is now?

A. Doctor Pohl is dead.

Q. Do you know where Doctor Sutherland is now?

A. No. I do not. He is outside some place. I don't know where he is. He was the Aerie physician at that time and had been for years.

Q. By the Aerie physician, you mean he was the Aerie physician of the Fraternal Order of Eagles.

A. Yes, sir.

Q. Well, then, you were a member of the Eagles, were you? A. Yes, sir. [80]

Q. Did you draw any benefits from the Fraternal Order of Eagles for that illness that you had as a result of that fall?

(Plaintiff objects. Overruled.)

A. Yes, sir. I drew the full benefits from the Eagles.

Q. Now you say, Mr. Callahan, that you have not had sexual intercourse with any woman since that fall occurred. A. No, sir.

Q. Do you remember what year it was that you were hurt, and about what time of the year?

A. I can't just remember the time. It was either the latter part of October, or November—first of November, 1910.

(Testimony of Daniel Callahan.)

Q. In the year 1910? A. Yes, sir.

Q. Now, why did you state that you had not had sexual intercourse with a woman since you had that fall? Is there any particular reason for stating that?

A. Nothing more than that I never did. I had, the doctor told me—(Interrupted).

(Plaintiff objects as irrelevant, incompetent, immaterial, hearsay and a self-serving declaration. Mr. Tozier claims that witness has a right to state what he was advised by a physician; and the Court states that witness may testify to what the treatment was. Mr. Tozier claims that the advice was part of the treatment.)

Q. What physician was it that you had this conversation with, that advised you, Mr. Callahan?

A. Doctor Pohl.

Q. Just state what that was.

(Plaintiff objects on same grounds. Objection overruled.)

A. Well, I think it was February, 1911, I was in —or March, 1911, I was in Doctor Pohl's office. Doctor Sutherland, when he was not here, if he was out on the creeks, or any place, and he [81] was not here, why Doctor Pohl took care of his patients; and I was in there this day, and he said that I was getting along very well, that there was nothing much the matter with my arm now only it was stiff. I think those cords here had been carried so long that I couldn't straighten it. I had carried it in a sling so long that I couldn't straighten it, those cords got

(Testimony of Daniel Callahan.)

drawed. And I told him I didn't care so much about that, only I told him that I hadn't erections—this other had never got stiff since I had got hurt. Then he started to question me, how I had lived, and so on, and what was the reason, and how I had lived for years before, and if I had ever been sick, and what kind of sickness I had; and I told him, and he advised me that I should not drink, and that I shouldn't use tobacco, and that I might come to in time.

Q. What sickness did he ask you about?

A. Well, he asked me if I ever had the gonorrhoea, and what other things, mostly the gonorrhoea, if I had ever had that, and I told him I had.

(The Court calls Mr. Tozier's attention to the fact that the evidence has gotten far beyond the offer, and states that the witness may testify as to the advice he received or treatment that he received with reference to the injuries of which he complains. Argument.)

Q. Did you, in this conversation with Doctor Pohl, Mr. Callahan, tell Doctor Pohl of your previous life?

A. Yes, sir.

Q. What had been your previous condition as to your sexual ability prior to the time you had that fall? A. I had told him—(Interrupted).

(Mr. Roth objects.)

Q. Answer the question: What was your physical condition in regard to your sexual ability, and by that I mean your ability to have sexual intercourse

(Testimony of Daniel Callahan.)

with a woman, [82] prior to the time you had that fall?

A. Well, for a couple of years it didn't amount to much. I couldn't more than once a month, sometimes not that often, for a year or two previous to this fall, maybe three years.

Q. Then you had noticed, you say, that you were waning, that you were losing at that time your sexual ability. A. Yes, sir.

Q. Did you tell that to Doctor Pohl?

A. Yes, sir.

Q. Did or did not Doctor Pohl advise you that your fall had anything to do with your sexual ability?

A. Yes. He said that that was what brought it on thoroughly.

Q. That is, that that—(Interrupted).

A. Was the final wind-up to it.

Q. What did he say to you, if anything, Mr. Callahan, in regard to your recovering from your inability to perform sexual intercourse?

A. Well, he said if I took very good care of myself, not drink or use tobacco, that it might come back. He said that in any event I would grow fat and heavy.

Q. Have you grown fat and heavy since then?

A. Yes, sir.

Q. How much weight have you taken on since 1910, approximately, do you know?

(Plaintiff objects as irrelevant, incompetent and immaterial. Objection sustained. Defendant excepts. Exception allowed.)

(Testimony of Daniel Callahan.)

Q. Now, did Doctor Pohl prescribe for you at that time any medicine to relieve you from your sexual inability, or did he advise you in regard to that matter?

A. The only advice he gave me—he advised me; no medicine. [83] He advised me for to not to drink or not to use tobacco.

Q. And you say that since that time you have not had sexual intercourse with any woman?

A. Yes, sir.

Q. Have you had erections of the penis?

A. No, sir. I have not.

Q. I understood you to say that you told Doctor Pohl that you had had the gonorrhoea?

A. Yes, sir. I told him I had it about two years.

Q. At one time? A. Yes, sir.

Q. Had you had it oftener than once?

A. Yes. I have had it several times.

Q. You say you had it for two years at one time?

A. Yes, sir.

Q. What treatment, if any, did you take at that time?

A. Well, I was up in British Columbia—(Interrupted).

Q. Before you came to Alaska? A. Yes, sir.

Q. When did you come to Alaska, Mr. Callahan?

A. 1908.

Q. 1908. Proceed now and tell about what treatment, if any, you had in British Columbia?

A. Well, I was about a hundred and ten miles from a little town called Revelstoke, up in what was called—(Interrupted).

(Testimony of Daniel Callahan.)

(Plaintiff, by Mr. Roth, objects as irrelevant, incompetent and immaterial. Mr. Tozier states that he will follow it up by expert testimony and show the result of certain treatment of gonorrhoea and the effect that it has—a prolonged case of gonorrhoea unattended to—has upon the sexual ability of the male. Objection overruled.)

A. (Continuing.) I was working up in what was called the Big Bend country and I was up there for about a year and a [84] half, and I got some stuff out of the company store, what they call the "Big G," and I used that as an injection.

Q. You mean the company store was the Big G, or the medicine was the Big G? A. The medicine.

Q. How was that used, in what manner?

A. By a syringe.

Q. Injection? A. Yes, sir.

Q. Into the penis? A. Yes, sir.

Q. And did you use that steadily?

Q. Yes. I used it quite often.

Q. What were you doing there in the Big Bend country, Mr. Callahan? A. I was packing.

Q. With horses? A. Yes, sir.

Q. You were riding a good deal? A. Yes, sir.

Q. Mr. Callahan, you heard the testimony yesterday of the witness Laura Herrington to the effect that she had visited your house when she was about twelve years of age, and that you had a conversation with her there wherein you stated to her, "He said he did that to Grace. That she wasn't afraid." Did you

(Testimony of Daniel Callahan.)

ever have such a conversation with the witness Laura Harrington at your house or elsewhere?

A. No, sir. [85]

Q. You heard the witness Joe Mock testify here yesterday, Mr. Callahan—you are acquainted with him? A. Yes, sir.

Q. How long have you known him?

A. Since 1900 or 1901, I don't remember which; 1900 or 1901.

Q. A little louder.

A. Since 1900 or 1901. I don't just remember. Somewhere along there.

Q. What is the present relationship between you and Joe Mock as regards your friendship? Are you friendly or otherwise?

(Plaintiff objects as irrelevant, incompetent and immaterial. Objection overruled.)

A. We are not friendly.

Q. How long has that unfriendliness existed, Mr. Callahan?

(Plaintiff makes same objection. Overruled.)

A. Since a year ago last fall.

Q. You are, and have been for a number of years, a member of the City Council of Fairbanks?

A. Yes, sir.

Q. What was the nature of the unfriendliness between yourself and Mr. Mock?

(Plaintiff objects as irrelevant, incompetent and immaterial. Objection sustained. Defendant asks and is given an exception.)

Q. Have you ever had a conversation—I mean by

(Testimony of Daniel Callahan.)

ever having had a conversation, have you, since the time you say this unfriendliness between yourself and Joe Mock began, had a conversation with Joe Mock in regard to his duties as an employee of the City of Fairbanks?

(Plaintiff objects as irrelevant, incompetent and immaterial. Objection sustained. Defendant asks and is given an exception.) [86]

Q. Have you and Joe Mock had any quarrel since that unfriendliness began, as you stated, over his employment by Chief Wiseman in performing work for the City of Fairbanks?

(Plaintiff objects on all the grounds last stated. Mr. Tozier states that the question is presented with the purpose of contradicting the testimony of Joe Mock. Objection overruled.)

Q. (Continuing.) By "quarrel" I mean what is known as hot words. A. Yes.

Q. Mr. Callahan, did you ever at any time when Grace Carey was in your residence in Fairbanks pull down the blinds at your windows in your residence or put a shawl or a blanket over any one of the windows? A. No, sir. I did not.

Q. Mr. Callahan, do you think of anything else that you want to testify to at this time that I have not asked you about?

Mr. ROTH.—That is objected to—(Interrupted).

Mr. TOZIER.—Just a minute. (Continuing.) —that appeared in the testimony of any of the witnesses that appeared upon the stand here yesterday?

(Plaintiff objects as irrelevant, incompetent and

(Testimony of Daniel Callahan.)

immaterial, too indefinite. Objection sustained and the Court states that Mr. Tozier may examine the testimony and see if he desires to *any* any questions. Defendant asks and is allowed an exception.)

Q. How long, Mr. Callahan, have you known Grace Carey? A. Since she was born.

Q. How long have you known Laura Herrington?

A. Since she was born.

Mr. TOZIER.—You may cross-examine. [87]

Cross-examination.

(By Mr. ROTH.)

Q. When did you say that you came to Alaska?

A. 1898.

Q. You said 1908. I thought you misspoke yourself and meant to say 1898. When was it that you had that two-year dose of gonorrhoea?

A. About—just before I came to Alaska. I just got better before I came to Alaska.

Q. Had you gotten well before you came to Alaska in 1898? A. Practically.

Q. You were practically well then? A. Yes.

Q. I suppose you were entirely over it by the time that you got married? A. Yes, sir.

Q. You were not impotent when you married your wife, were you? A. I didn't understand you.

Q. You were not impotent when you married your wife, were you?

A. I don't understand the question.

Q. Well, you could—(Interrupted).

The COURT.—Capable of sexual intercourse.

A. Yes, sir.

(Testimony of Daniel Callahan.)

Mr. ROTH.—Q. Were you capable of having sexual intercourse when you married your wife?

A. Yes, sir.

Q. You were all right when you married her.

A. Yes, sir.

Q. And how long a time after you got over this bad dose of gonorrhoea was it that you began to be unable to get an erection? [88]

A. Well, from—I don't know—1905 or 6 I started to fail.

Q. You said you had several other doses of gonorrhoea besides this long one, did you? A. Yes, sir.

Q. Were they before or after? A. Before.

Q. All before? A. Yes, sir.

Mr. ROTH.—That is all.

Mr. TOZIER.—That is all.

Testimony of Mrs. Daniel Callahan, for Defendant.

MRS. DANIEL CALLAHAN, a witness for defendant, after being duly sworn, testified as follows, to wit:

Direct Examination.

(By Mr. TOZIER.)

Q. Your name is Mrs. Callahan. A. Yes, sir.

Q. You are the wife of Dan Callahan, the man seated on my left? A. Yes, sir.

Q. How long have you been married to Dan Callahan? A. Sixteen years.

Q. Where were you married? A. Circle City.

Q. Circle City, Alaska. A. Yes.

Q. Where do you live, Mrs. Callahan?

A. Circle City.

(Testimony of Mrs. Daniel Callahan.)

Q. No. Where do you live now?

A. Fairbanks.

Q. How long have you lived at Fairbanks?

A. I think it is twelve years ago. [89]

Q. Twelve years? A. Yes.

Q. Have you been living with Dan Callahan here in Fairbanks? A. Yes, sir.

Q. For twelve years? A. Yes, sir.

Q. Do you know Grace Carey? A. Yes, sir.

Q. How long have you known Grace Carey?

A. Oh, since I guess she is born.

Q. Do you know Laura Herrington?

A. Yes, sir.

Q. How long have you known Laura Herrington?

A. Oh, since she is born in Circle City.

Q. Are you an Indian woman? A. Yes, sir.

Q. Is Mrs. Herrington, the mother of Laura Herrington, an Indian woman?

A. Yes, sir. She is an Eskimo.

Q. Is Mrs. Carey, the mother of Grace Carey, an Indian woman? A. Yes, sir.

Q. Laura Herrington come to your house often?

A. Oh, yes, since this started. After they started this Wooldridge case that time started coming to our house.

Q. Does Grace Carey come to your house often?

A. Often.

Q. Were you away from Fairbanks and over at Circle City last summer? A. Yes, sir. [90]

Q. What time did you leave Fairbanks to go to Circle City?

(Testimony of Mrs. Daniel Callahan.)

A. Oh, I can't tell that. I know it was June some time I go away.

Q. Some time in June you went to Circle City?

A. Yes, sir.

Q. When did you come back, Mrs. Callahan?

A. Oh, I don't know. It was pretty near the last boat.

Q. Pretty near the last boat.

A. Yes. I guess after me two steamboats came.

Q. After you two steamboats came back?

A. Yes, sir.

Q. Did you see Grace Carey at your house after you came back? A. Yes, sir.

Q. Did she come there often?

A. Often. Just go through the house all the time; come back door and go through the house; go down town, come back again and go through the house again.

Q. Why did she do that?

(Plaintiff objects as irrelevant, incompetent and immaterial. Objection sustained.)

Q. Did Laura Herrington come to your house after you came back from Circle City?

A. Oh, I guess two or three times.

Q. Grace Carey lives over back of your house on Fourth Avenue, don't she? A. Yes.

Q. Yes. Mrs. Callahan, do you understand what sexual intercourse means? A. No.

Q. Do you understand what you call "push" means? A. I guess so. [91]

Q. By "push" do you understand that means the

(Testimony of Mrs. Daniel Callahan.)

way men and women make babies? What is it?

A. Yes.

Q. And that is what you call when men and women go together that way, you call that what?

A. I don't know. I don't know English enough to call that.

Q. You call it push? A. Yes, I call it that.

Q. How long has it been, Mrs. Callahan, since your husband, Dan Callahan, pushed you?

A. Oh, I don't know. It is a long time.

Q. How long you think?

A. Why, I can't tell you. Since he got hurt.

Q. Since he got hurt where? A. Arm.

Q. Not push you since that time?

A. Oh, he tried to. He can't.

Q. What is the matter?

A. I don't know. He can't make him strong.

Q. By "strong" you mean he can't make his penis hard? A. No.

Q. Limber all the time? A. Yes.

Q. Before Dan got hurt on the shoulder, he push you much? A. Oh, not very often.

Q. What is the matter then? A. I don't know.

Q. You talk to Dan about that?

A. Well, one time he is going outside, I told him: "You better see the doctor what is the matter with you," and I guess he never did. [92]

Q. That is the time he went out to Seattle?

A. Oh, he go through that Seattle.

Q. Before that, you spoke to Dan to see the doctor?

A. Yes, and he come back just the same.

(Testimony of Mrs. Daniel Callahan.)

Mr. TOZIER.—You may cross-examine.

Cross-examination.

(By Mr. ROTH.)

Q. You remember talking to Grace Carey over at the hospital just a couple of days after Dan was arrested in this case? A. Yes.

Q. In the parlor at the hospital?

A. Parlor downstairs?

Q. Yes, the parlor downstairs. A. Yes.

Q. And nobody there but you and Grace?

A. Yes.

Q. You and Grace alone? A. Yes.

Q. Didn't you tell Grace that time that you wanted her to help Dan out? A. No, sir.

Q. Didn't you say, "Grace, I want you to help Dan out this time?" A. No, sir.

Q. All right. Down at your house, didn't you have a talk with Laura Herrington when her mother, Mrs. Herrington, was there? A. Yes.

Q. A few days after Dan was arrested on this charge? A. Yes.

Q. Didn't you tell Laura—didn't you ask Laura to try and mix [93] it all up, try to mix her story all up? A. I never say like that.

Q. You never said like that at all. A. No.

Q. Never said anything like that. A. No.

Q. Nothing like it? A. No.

Mr. ROTH.—That is all.

Testimony of Dick Callahan, for Defendant.

DICK CALLAHAN, a witness for defendant, after being duly sworn, testified as follows, to wit:

Direct Examination.

(By Mr. TOZIER.)

Q. Your name is Dick Callahan. A. Yes, sir.

Q. You are an adopted son of Dan Callahan.

A. Yes, sir.

Q. You live in Fairbanks, Alaska? A. Yes, sir.

Q. Do you live with Dan Callahan and Mrs. Callahan, his wife, at the residence on Third Avenue?

A. Yes, sir.

Q. Were you in Fairbanks during the summer of 1915? A. Yes, sir.

Q. What were you doing? What work, if any, were you doing A. I was teaming, driving horses.

Q. Do you know Grace Carey?

A. Yes, sir. [94]

Q. Do you know Laura Herrington?

A. Yes, sir.

Q. Did you see Grace Carey at Mr. Callahan's residence where you live—(Interrupted). A. Yes.

Q. Just a moment before you answer. (Continuing.) —last fall?

A. I seen her around there sometimes last fall.

Q. Frequently? A. Yes.

Q. Did you see Laura Herrington over there last fall? A. Yes.

Q. The house of Dan Callahan is between the residence of Grace Carey and her people, and the down town part or Front Street, is it not? A. Yes.

(Testimony of Dick Callahan.)

Mr. ROTH.—There are lots of other houses-

Mr. TOZIER.—I will fix it definitely. Q. And, in going to and from the postoffice, and the N. C. store, and places like that—what we call down in town—did Grace Carey, and her little sister Irene before she died, frequently pass through the Callahan house?

A. Yes. They went right through it.

Mr. TOZIER.—You may cross-examine.

Mr. ROTH.—No questions.

(Fifteen minutes recess, jury in charge of bailiffs. After recess, defendant and jury in court, and the attorneys, and trial resumed.) [95]

Testimony of H. J. McCallum, for defendant.

H. J. McCALLUM, a witness for defendant, after being duly sworn, testified as follows, to wit:

Direct Examination.

(By Mr. TOZIER.)

Q. Your name is H. J. McCallum. A. Yes.

Q. What is your business?

A. I practice medicine here in Fairbanks.

Q. How long have you been practicing medicine at Fairbanks? A. Close to nine years.

Q. Are you a graduate of any college? A. Yes.

Q. What college? A. University of California.

Q. How long have you been practicing medicine?

A. About twenty-one or twenty-two years,.

Q. Where have you practiced, doctor?

A. California and Dawson and Fairbanks.

Q. Any place else? A. No.

Q. During the course of your practice, have you had occasion to treat patients for impotency?

(Testimony of H. J. McCallum.)

A. We occasionally meet with some. Yes, sir. I have had some.

Q. Have you had occasion to investigate the causes of impotency?

A. In only the general way that we are taught in the schools by the text-books. I have had a limited experience.

Q. And have you had occasion to treat gonorrhoeal cases? A. Yes, sir. We have lots of them.

Q. What, doctor, from your experience and knowledge as a physician gleaned from your practice and your reading and [96] education, would you say are the causes of impotency in the male?

(Plaintiff objects to the question as too general. Objection overruled.)

A. There are a great many factors that produce impotency in a man. A man that has been previously virile, one of the most common causes is a long period of masturbation, then the various nervous diseases like locomotor ataxia and paresis and those various diseases that affect the spinal cord, produce impotency, and gonorrhoea sometimes is followed by impotency, and sometimes a high state of living, too much dissipation, tends to and will produce it in some cases.

Q. Would you say, doctor, that a man who had had the gonorrhoea a number of times, and who had had one case of gonorrhoea lasting a period of two years or more, might, after he had reached the age of forty-five years, suffer from impotency as a result of those cases of gonorrhoea, and particularly as a re-

(Testimony of H. J. McCallum.)

sult of the prolonged case of gonorrhoea lasting over a period of two years as aforesaid?

(Objection.)

Q. (Continuing.) If the prolonged case of gonorrhoea had occurred at a period before midlife, and by that I mean before the age of forty-five.

(The Court suggests that the question be made to conform to the testimony.)

Q. (Continuing.) —and from the age of thirty to thirty-two years.

A. Well, I could only say that it could be a determining factor. Nothing but a thorough examination at the time would uncover the fact that it is the cause. It might be or it could be a determining factor in impotency. [97]

Q. Would an examination determine that the gonorrhoea was the cause of the impotency, and by "determining" I mean obsolutely convince you, or would an examination be useless so far as actual knowledge as to the cause of the impotency is concerned. (Objection. Question withdrawn.)

The COURT.—Examination at what time?

Mr. TOZIER.—I withdrew that question.

Q. You mean, an examination of the man at the time he had the gonorrhoea, do you, Doctor?

A. Yes, sir. Yes.

Q. That is, subsequent examination made years afterward would not absolutely determine that the gonorrhoea was the cause of it?

A. It would only—you would have to discover an ulcer or some defect in the prostate gland. The pros-

(Testimony of H. J. McCallum.)

tate gland appears to be the source of sexual power. It appears to have more to do with the sexual appetite than any other part of the body—the prostate gland, and any pathological defect in that gland affects the sexual vigor of the man. And if you examined a man that was suffering from impotency and he told you that he had a dose of gonorrhoea, and you examined the prostate gland—a full examination with your electric mirror—you would expect to cure those sores to cure his impotency. You would attribute his impotency to the presence of those sores, probably, more or less. It might be some other thing.

Q. But if one had permitted that condition to continue for a year without attempting to remedy it in any way, it would finally become chronic, would it not—the impotency, I mean—and be incurable? [98]

A. I could answer that. Every man is more or less a law to himself. There are men suffering all the time from prostatic trouble that don't seem to have much loss of sexual vigor; but in an individual where you find those lesions, and he tells you he is impotent, you would attribute the impotency to those lesions more or less.

Q. What class of men, Doctor, as regards physique, has it been your experience are more apt to become impotent. That is the question: What class of men, as regards your experience, Doctor, as to their physique, are more apt to become impotent?

(Mr. Roth objects as irrelevant, incompetent and immaterial, and too general. The Court suggests to

(Testimony of H. J. McCallum.)

Mr. Tozier that he make the limitation, as the doctor does not know whether the question refers to whether a man is short or tall or what, and Mr. Tozier states that he will make the limitation.)

Q. Are men who are inclined to be corpulant more apt, as a result of disease such as you described, to become impotent, than men of the other build—the slender build?

A. I couldn't answer that question, Mr. Tozier. I have no authority to answer that one way or the other, and from my own experience I wouldn't care to say so, not in direct answer to that question.

Q. Very well.

A. As far as the generative organs are concerned, I have noticed in my past experience that lots of large men have organs that are under size. That is the only difference I have noticed. The size of the man bears no ratio to the size of his generative organs. That has been my experience.

Q. And it makes no difference as to his physique, then, in your estimation—as to his build,—(Interrupted). A. No, sir. [99]

Q. —as regards impotency. A. No, sir.

Q. One man is as apt to become impotent as another.

A. Yes, sir. I have no statistics or experience—(Interrupted).

Q. Is there any age at which a man is more apt to become impotent than at any other age, Doctor?

A. It depends largely on his natural sexual vigor and the kind of life he has lived. I have a work on

(Testimony of H. J. McCallum.)

sexual disability of men by a great authority who declares in New York City that the average man over fifty is impotent.

Mr. TOZIER.—You may cross-examine.

Cross-examination.

(By Mr. ROTH.)

Q. In case of a man having a very severe case of gonorrhoea at the age of thirty and continuing say to the age of say thirty-two, a continuous period of two years, and that he gets over the disease of gonorrhoea to all intents and purposes—(Interrupted).

A. That is, the discharge ceases to run?

Q. I am putting it this way: Suppose that he gets over it; that he is an unmarried man at the time he gets over it; afterwards he gets married and he is normal—he is normal from the age say of thirty-three or thirty-four up to the age of, we will say, forty-three or forty-four, perfectly normal for a period of about ten years, sexually normal, no impotency or signs of impotency; would you in case of subsequent impotency attribute that at all to the gonorrhoea that he had ten years before—ten or twelve years before? A. No, sir; I could not. [100]

Q. The fact that he had been normal during a period of ten years would be, from a scientific or medical standpoint, proof that the gonorrhoea had not affected his prostate gland at all?

A. Yes, sir; it would exemplify that fact.

Mr. ROTH.—That is all.

(Testimony of H. J. McCallum.)

Redirect Examination.

(By Mr. TOZIER.)

Q. In many cases, Doctor, the man might recover sufficiently to have no discharge, and yet the gonorrhoeal germ, or whatever medical term you might have for it, might remain in his system and affect him, might it not?

A. It is supposed—in some cases the germ is supposed to inhabit the prostate gland for periods of some years, but I couldn't say how many years, but it has been—commonly two or three years anyway—but it has been supposed to linger in the prostate gland for some years.

Q. Do modern physicians, present day physicians, I mean, lay great stress upon the injuries to the human system resulting from gonorrhoea, as compared to the injuries resulting from syphilis?

(Plaintiff objects as irrelevant, incompetent and immaterial and no foundation. Objection sustained. Defendant asks and is allowed an exception.)

Q. How long has the germ of gonorrhoea been known to inhabit the human system, Doctor, do you know? (Objection. Question withdrawn.) Speaking, Doctor, of the glands affected by gonorrhoea; after they have once been seriously affected say as they would be by a dose, as we call it, of gonorrhoea lasting over a period of two years, do they ever become absolutely normal? [101]

(Plaintiff objects, and defendant withdraws question.)

Q. What is the medical term or scientific term for

(Testimony of H. J. McCallum.)

the neck of the bladder, Doctor?

(Plaintiff objects, and defendant withdraws question.)

Q. What do you understand by the prostate gland, Doctor?

A. The prostate gland is a mass of spongy tissue that surrounds the neck of the bladder. Through its substance the urethra passes for about an inch and a half. It surrounds the first portion of the urethral canal as it leaves the bladder for about an inch; and through its substance the ejaculatory glands that convey the semen from the testicles pass through its substance.

Mr. TOZIER.—That is all.

Mr. ROTH.—That is all.

Mr. TOZIER.—The defendant rests.

Testimony of Grace Carey, for Plaintiff (in Rebuttal).

GRACE CAREY, witness for plaintiff, called in rebuttal and heretofore sworn, testified as follows, to wit:

Direct Examination.

(By Mr. ROTH.)

Q. A few days after the defendant, Mr. Callahan, was arrested in this case, at the St. Joseph's hospital, in the parlor of the hospital, yourself and Mrs. Daniel Callahan being there together alone, did Mrs. Callahan ask you to help Dan out this time?

A. Yes. She did.

Mr. ROTH.—You may cross-examine. [102]

(Testimony of Grace Carey.)

Cross-examination.

(By Mr. TOZIER.)

Q. Mrs. Callahan called over there to the hospital and you were called down stairs, were you not, Grace? A. Yes.

Q. And went into the room where she was down there. A. Yes.

Q. Down stairs? A. Yes.

Q. And there you and Mrs. Callahan had a conversation. A. Yes.

Q. About this trouble that Dan was in, and Mrs. Callahan asked you at that time, did she not, "What is the matter? What do you say Dan do that for?" She said that, didn't she? A. Not that I remember of.

Q. Didn't she ask you that, Grace, there at that time?

A. She asked me—she told me to tell who the first fellow was who done it—that is all I remember—and I told her I did tell.

Q. Yes. And she also asked you, did she, Grace, "What you say this about Dan for? You know that is not true."

A. No. She didn't say that to me.

Q. She didn't say that at all. A. No.

Q. How long were you in the room there with her, Grace? A. I don't know.

Q. How long did you talk to her?

A. I don't know.

Q.Was that all that was said between you?

A. I don't remember what she said.

(Testimony of Grace Carey.)

Q. You don't remember what she said?

A. I don't remember what else she said. [103]

Q. Who spoke first?

A. Why, she did. She sent for me. She told the Sister she wanted to see me, and the Sister came up.

Q. And you went down stairs. A. Yes.

Q. And went in there. Now, all you remember is the very question that Mr. Roth asked you. That is all you remember that was said. Is that it?

A. She said Dan was going to have a new jury, and she wanted me to try and help her that time, this time.

Q. That she didn't want you to do anything against Dan. Is that what she said?

A. I guess that is what she meant. She didn't say it just like that.

Q. What was the language that she used?

A. I don't know. She said, "I want you to try and help me," or "have mercy on me," something like that, "this time, because Dan is going to have a new jury." She wanted me to help him out this time, because Dan was going to have a new jury.

Q. "Dan was going to have a new jury." Did she use that language?

A. No. She didn't use that exact language, but that is what she meant, that is the meaning of it.

Q. You think, then, that is what she meant, when you testified a minute ago?

A. Yes. I know that is what she meant.

Q. That is what she meant. You don't remember anything she said there positively, do you; it is just

(Testimony of Grace Carey.)

what you think she meant.

A. I know she wanted me to try and help Dan because he was going to have a new jury. She might have put something **[104]** else in it, but that is what she said.

Q. You are sure she said that.

A. I know she said he was going to have a new jury, and she was wanting me to help out Dan, and she told me to tell who the first fellow was, and I said I did,—that Dan Callahan was.

Q. You didn't tell her that Dan Callahan was, did you? A. Yes. I did.

Q. You didn't tell that to Mrs. Callahan that day?

A. That Dan Callahan was the first one?

Q. Yes. A. I know I did.

Q. You are positive of that? A. Yes.

Q. What else was said there, Grace?

A. She told me why I didn't tell on some of the young boys around town here that did that?

Q. What did you say?

A. I told her, because none of the young boys had ever tried to do it.

Q. That was your answer, was it.

Q. That was your answer, was it?

A. Yes.

Q. You now remember all of those things that were said there? A. Yes.

Q. That was the exact language that was used?

A. No. That is not the exact language she used. That is what she meant.

(Testimony of Grace Carey.)

Q. So you are testifying now, are you, Grace, about what Mrs. Callahan meant when she talked with you there that day? A. Yes. [105]

Mr. TOZIER.—That is all, Grace.

Mr. ROTH.—That is all.

Testimony of Laura Herrington, for Plaintiff (in Rebuttal).

LAURA HERRINGTON, a witness for plaintiff, in rebuttal, having been heretofore sworn, testified as follows:

Direct Examination.

(By Mr. ROTH.)

Q. Laura, two or three days after the defendant was arrested on this charge were you and your mother at the residence of Mrs. Callahan?

A. Yes.

Q. At that time and place, in the presence of yourself and your mother and Mrs. Callahan,—no one else being present,—did Mrs. Callahan say to you, "Try to mix your story all up." A. Yes.

Mr. ROTH.—You may cross-examine.

Cross-examination.

(By Mr. TOZIER.)

Q. Who else was there?

A. My mother and I. I don't remember.

Q. Wasn't Mrs. Durgan there, too?

A. Well, I was there so many times I don't remember.

Q. No. You don't remember whether Mrs. Durgan was there at that time or not. A. No.

(Testimony of Laura Herrington.)

Q. And you don't remember whether there was anybody else there at that time except you and your mother and Mrs. Callahan.

A. That is all I remember of.

Q. And she didn't tell you what story, did she, Laura? **[106]**

A. No. She just told me to try and mix it all up.

Q. Mix it all up. And that was all that was said between you at that time?

A. Well, she talked of other things.

Q. That is all she said about this matter?

A. Yes.

Q. How long were you there, Laura?

A. I don't know.

Q. Were you there five minutes?

A. I was there longer than that.

Q. Ten minutes? A. I don't know.

Q. Fifteen minutes? A. I don't know.

Q. Half an hour?

A. I am not able to tell how long I was there.

Q. What is that?

A. I am not able to tell how long I was there.

Q. If you were able, you would tell?

A. I am not able.

Q. Who did you go there with?

A. My mother.

Q. How long did you stay there?

A. I don't know.

Q. Have quite a conversation there, did you?

A. I don't know.

Q. General conversation? A. Yes.

(Testimony of Laura Herrington.)

Q. Your mother talked with Mrs. Callahan?

A. Yes.

Q. You talked to Mrs. Callahan? A. Yes.

[107]

Q. You talked to Mrs. Durgan?

A. I don't know if she was there or not.

Q. But you don't know how long you stayed?

A. No.

Q. Nobody sent for you to go over there?

A. No.

Q. You and your mother just walked in there. Was that it?

A. Knocked at the door, of course.

Q. Who knocked? A. I did.

Q. You were just making a friendly call, were you? A. Yes.

Q. On Mrs. Callahan? A. Yes.

Mr. TOZIER.—I think that is all, Laura.

Redirect Examination.

(By Mr. ROTH.)

Q. Where is your mother, now?

A. She is at home.

Q. Is she sick? A. Yes.

Q. Do you think she will be well enough to come up here this afternoon?

A. Yes. I think she would.

Mr. ROTH.—That is all.

Further Cross-examination.

(By Mr. TOZIER.)

Q. What is the matter with your mother?

(Testimony of Laura Herrington.)

A. She is sick.

Q. What is the trouble with her? **[108]**

(Plaintiff objects as irrelevant, incompetent and immaterial.)

Q. You know what is the matter with your mother? A. Yes. I know.

Q. What is the matter with her?

A. She is sick. That is all I know.

Q. What kind of sickness? A. I don't know.

Q. How do you know she is sick?

A. That is all I know.

Q. Is that the best answer you can give?

A. Yes.

Mr. TOZIER.—That is all.

Mr. ROTH.—That is all.

(The Court takes a recess until 2 P. M. to day and the jury, after being admonished by the Court in the usual manner withdraw in charge of the bailiffs. At 2 P. M., March 24, 1916, the jury come into court and answer to their names, and the defendant and his attorney and the district attorney are present in court and the trial is resumed.)

Mr. ROTH.—The witness, Mrs. Herrington that we spoke of is not in physical condition to take the stand, and therefore the Government rests.

(The jury withdraw from the courtroom, at the request of Mr. Tozier, they being in the custody of the bailiffs.) At 2:15, P. M., March 24, 1916, the jury return into court and answer to their names, and the defendant and his attorney and the district

attorney are present; and the trial is resumed.)

Mr. TOZIER.—The defendant rests.

TESTIMONY CLOSED. **[109]**

The case was argued to the jury by the attorneys for the respective parties, and during the closing argument made on behalf of the prosecution by R. F. Roth, Esq., United States District Attorney, the following occurred:

"Mr. ROTH.—You noticed that I challenged the statement of Mr. Tozier that Grace Carey testified that the last time that she was at the Callahan house was on the 25th day of June. I made that challenge of that statement because my understanding was that she testified that that was the last time that she had sexual intercourse with defendant Callahan, and I have no doubt at all that that is what was intended, because there is no doubt but what Grace Carey had been to the Callahan house many times since. That is an immaterial matter. There is no doubt but what she had been there many times since, and if I had understood that statement, why, of course, I would have had that corrected by asking Grace if she had been there later.

Mr. TOZIER.—We object to that. That is not a proper statement to go to a jury, of an attorney, if your Honor please; for an attorney such as Mr. Roth to stand before this jury and say: If I had understood a certain thing, I would have introduced certain evidence. That is not proper, and not a fair statement to go before the jury. It is what he did; it is what has been done in the trial of this

case; not what Mr. Roth might have introduced if he had understood a certain situation.

The COURT.—Either attorney may explain what he believes the evidence means.

Mr. TOZIER.—That is true, but not what he might have introduced in evidence. **[110]**

The COURT.—What he should do, or what he might have done, are matters that are not for the consideration of the jury. The jury will find upon what has been done and what they believe to be a logical deduction or reasonable theory to be drawn from the evidence, and find the facts accordingly."

The arguments to the jury having been completed, the Court read its written instructions to the jury, as follows:

[Caption and Title.]

Instructions to the Jury.

GENTLEMEN OF THE JURY:

1.

The defendant Daniel Callahan is accused by the Grand Jury of the crime of rape, and he is now on trial before you.

The indictment charges that the said Daniel Callahan on the twenty-fifth day of June, A. D. 1915, at Fairbanks in the Fairbanks Precinct, Fourth Judicial Division, Territory of Alaska, and within the jurisdiction of this Court, did then and there willfully, unlawfully and feloniously, carnally know and abuse one Grace Carey, a female child, then under the age of sixteen years, to wit; of the age of fourteen years, he, the said **[111]** Daniel Cal-

lahan being then and there a male person over the age of twenty-one years.

2.

The defendant has entered a plea of not guilty, and such plea controverts and denies each and every essential element of the crime charged in the indictment, and places the burden upon the prosecution of proving each such element, beyond a reasonable doubt, before you can find the defendant guilty of said crime so charged.

3.

You are instructed that the jury and the Judge of this court have separate functions to perform.

It is your duty to hear all the evidence, all of which is addressed to you, and to decide thereupon all questions of fact. It is the duty of the Judge of this court to instruct you upon the law applicable to the facts and evidence in this case, and the law makes it your duty to accept as law what is laid down as such by the Court in these instructions.

And you are instructed that these instructions are to be taken and considered by you together as a whole.

4.

You are instructed that the indictment is a mere accusation, and is not, in itself, any evidence of the defendant's guilt. **[112]**

5.

The defendant is presumed to be innocent of the crime charged against him in the Indictment until he is proven guilty, beyond a reasonable doubt, by the evidence produced in this case and submitted to

you, and this presumption of innocence is a right guaranteed to the defendant by the law, and remains with him and should be given full force and effect by you, until such time in the progress of the case as you are satisfied of his guilt, from the evidence, beyond a reasonable doubt. The presumption of innocence is not a mere form to be disregarded at pleasure, but it is an essential and substantial part of the law of the land binding on the jury in this case, as in all criminal cases.

6.

You are instructed that the term "reasonable doubt" as defined by the law and used in these instructions, is that state of the case which, after a careful comparison and consideration of all the evidence in the case leaves the minds of the jury in that condition that they cannot feel an abiding conviction, to a moral certainty, of the truth of the charge.

The term "reasonable doubt" does not mean any doubt; but such doubt must be actual and substantial, as contradistinguished from mere vague apprehension, and must arise out of the evidence, or from a want of evidence, or from both such sources.

A reasonable doubt is not a mere whim, but is such a doubt as arises from a careful and honest consideration of all the evidence, or lack of evidence, in the case; and **[113]** the evidence is sufficient to remove all reasonable doubt when it convinces the judgment of ordinarily prudent men of the truth of a proposition with such force that they would act

upon the conviction without hesitation in their own most important affairs of life.

Proof beyond a reasonable doubt does not mean proof beyond all doubt.

7.

You should not consider any evidence sought to be introduced, but excluded by the Court, nor should you consider any evidence that has been stricken by the Court from the record, nor should you take into account, in making up your verdict, any knowledge or information known to you not derived from the evidence given upon the witness-stand.

8.

The jury are instructed that they are the sole judges of all questions of fact in this case, and they should determine the same from the evidence in the case. But your power in this connection is not arbitrary, but is to be exercised by you with legal discretion and in subordination to the rules of evidence laid down in these instructions.

9.

In considering the evidence in this case, you are not bound to find a verdict in conformity with the declarations or testimony of any number of witnesses, when their evidence does not produce conviction in your minds, against a lesser number of witnesses, or other evidence, which is satisfying to your minds. **[114]**

10.

In determining the credit you will give to a witness and the weight and value you will attach to his testimony, you should take into account the conduct

and appearance of the witness upon the stand; the interest he has, if any, in the result of the trial; the motive he has in testifying, if any is shown; his relation to or feeling for or against any of the parties to the case; the probability or improbability of such witness' statements; the opportunity he had to observe and to be informed as to matters respecting which he gave testimony before you; and the inclination he evinced, in your judgment, to speak the truth or otherwise as to matters within the knowledge of such witness. It is your duty to give to the testimony of each and all of the witnesses appearing before you such credit as you consider the same justly entitled to receive.

And in this connection you are instructed that evidence is to be estimated not only by its intrinsic weight, but also according to the evidence which it is within the power of the one side to produce, and of the other to contradict; and, therefore, if the weaker and less satisfactory evidence is offered, when it appears that stronger and more satisfactory evidence is within the power of the party offering the same, the evidence so offered should be viewed with distrust. **[115]**

11.

You are instructed that if you find that any witness has wilfully testified falsely in one part of his testimony in this case, you may distrust any part, or all, of the testimony of such witness. And, if you believe from the evidence that any witness appearing before you in this case has wilfully testified falsely, you are at liberty to reject the entire testi-

mony of such witness; but you are not bound to reject the entire testimony of a witness because he has testified falsely in some part of his testimony, you should reject the false part, and should give to the other parts such weight as you may deem they are justly entitled to receive. The foregoing instruction is applicable to female as well as male witnesses.

You should not fail to weigh and consider fairly and give proper weight to all testimony which you consider truthful.

12.

There is some evidence in this case as to oral admissions and statements of some of the parties to this case, to persons who have appeared before you as witnesses and testified to the same.

I charge you that, owing to the infirmity of the human mind and the inability of witnesses to repeat the exact language used by persons alleged to have made such oral admissions and statements, and to understand it correctly and repeat it with all its intended meaning, you are to view the evidence as to such oral admissions and statements with caution; but if you should find and believe that such oral admissions and statements were actually made by the person or persons alleged [116] to have made them, you should consider them as candidly and fairly as other evidence in the case, and give them weight accordingly.

13.

You are instructed that a person charged with the commission of a crime shall, at his own request, but not otherwise, be deemed a competent witness in his

own behalf, the credit to be given to his testimony being left solely to the jury, under the instructions of the Court.

You are instructed that in this case the credit to be given to the testimony of the defendant Daniel Callahan (who has appeared at his own request as a witness before you), is left solely to you, and you should give to it the same fair and candid consideration you do to the other witnesses in the case, but you are entitled to take into consideration the interest of the defendant in the result of the trial, as affecting his credibility.

14.

You are further instructed that the question of punishment is reserved for the Court, and that the jury have nothing to do with that branch of the case, and are not to consider the same.

It is for you to determine solely whether or not the defendant is guilty of the crime charged in the Indictment. The matter of the form and severity of the punishment, in event of conviction, is to be left to the discretion of the Court. [117]

15.

You are instructed that corroborating evidence must be such as tends to connect the accused with an alleged offense, and, as distinguished from evidence of the act itself, is additional evidence of a different character to the same point. It means to strengthen, to add weight or credibility, to a thing.

16.

You are instructed that there are two general classes of evidence; direct and circumstantial.

Evidence as to the existence of the main fact in issue, is direct evidence; while circumstantial evidence relates to the existence of facts which raise a logical inference as to the existence of the fact in issue.

If the evidence in this case discloses that a portion of the evidence is circumstantial, you are instructed that the same is legal and competent evidence, and is to be considered by you in connection with any direct evidence offered, in arriving at the facts disclosed by the evidence.

Circumstantial evidence is to be regarded by the jury in all cases where it is offered. It is sometimes quite as conclusive in its convincing power as the direct and positive testimony of eye witnesses, and, when it is strong and satisfactory, the jury should so consider it, neither enlarging nor belittling its force.

In order to warrant a conviction, both direct and circumstantial evidence considered together must be of a conclusive nature and tendency, leading to a satisfactory conclusion and producing in effect a reasonable and moral certainty that the accused committed the offense charged. [118]

17.

You are instructed that whoever has carnal knowledge of a female person, forcibly and against her will, or, being sixteen years of age, carnally knows and abuses a female person under sixteen years of age, with her consent, is guilty of rape.

18.

The intent to have sexual intercourse, where the

female is under the age of consent, is an essential element in the crime, and must be proved beyond a reasonable doubt; and this may be done by proof of any facts or circumstances tending to show such intent. In this case, it is also essential that the Government prove beyond a reasonable doubt that the act of sexual intercourse charged in the Indictment was committed on the 25th day of June, 1915; that at said time the girl Grace Carey was under the age of sixteen years; and that said act of sexual intercourse actually occurred.

19.

You are instructed that to constitute the crime of rape, it is necessary that penetration be shown, but, if penetration be shown to have actually taken place as a matter of fact, the degree of penetration is immaterial.

Penetration, as herein used, means the penetration of the female organ of a female with the male member or penis of a male. [119]

20.

You are further instructed that it is the policy of our law, as expressed in the statute, that any female under the age of sixteen years shall be incapable of consenting to the act of sexual intercourse, and that anyone committing the act with a girl within that age shall be guilty of rape, notwithstanding he obtained her consent thereto; and whether the girl in fact consented or resisted is immaterial in this case. In this case neither the element of force nor the question of consent has any application. The wit-

ness Grace Carey could not consent, and the law resists for her.

21.

The Government would not be required to show the age of Grace Carey by a family record or any instrument; such proof may be made by oral testimony of witnesses, and said Grace Carey is a competent witness as to her age, and such testimony may be based upon information with respect thereto, if any she may have, from her parents.

22.

You are further instructed that evidence of previous acts of sexual intercourse between the defendant and the witness Grace Carey, prior to the time of the act charged in the Indictment, is received and admitted in evidence to prove the disposition of the defendant herein, and as having a tendency to render it more probable that the act of sexual intercourse charged in the Indictment was committed on the 25th day of June, 1915, and for no other purpose. [120]

23.

You are instructed that if you believe, beyond a reasonable doubt, that the witness Grace Carey told the witness Laura Herrington of the act of sexual intercourse alleged to have been committed upon the said Grace Carey by the defendant, and that said Laura Herrington was the first person she met after said alleged act, and that it was the said Grace Carey's first opportunity to tell any person, and that said statement was made immediately after leaving defendant's house after said alleged act of sexual intercourse was completed, then that may be con-

sidered by you as a corroborating circumstance tending to sustain the truth of the statement of the said Grace Carey as to what had just transpired beween her and the defendant.

24.

You are instructed that in the case of rape it is not essential that the one upon whom the rape is alleged to have been committed should be corroborated by the testimony of other witnesses as to the particular act constituting the offense; and if the jury believe, beyond a reasonable doubt, from the testimony of the witness Grace Carey, and the corroborating circumstances and facts testified to by other witnesses, that the defendant did commit the crime as charged, the law would not require that the witness Grace Carey should be corroborated by other witnesses as to what transpired at the immediate time and place when it is alleged the crime was committed. [121]

25.

You are instructed that if you believe from the evidence in this case, beyond a reasonable doubt, that the defendant Daniel Callahan, being then and there over the age of twenty-one years, at Fairbanks, in the Fairbanks Precinct, Fourth Judicial Division, Territory of Alaska, on the 25th day of June, 1915, did have carnal knowledge of Grace Carey and did penetrate the female organ of Grace Carey with his male member or penis, and that said Grace Carey was then and there a female under the age of sixteen years, and was not then and there the wife of the defendant Daniel Callahan, you will find the defendant guilty of the crime of rape as charged in the Indictment.

26.

The jury are instructed that, while it is a rule of law that the prosecution is not bound to prove a crime alleged in the indictment to have occurred upon the day set forth in the indictment, but may prove it to have occurred at any time prior to the day alleged in the indictment, but within three years prior to the date of the finding of the indictment, nevertheless, where, as in this case, the prosecution by its evidence has elected to prove an offense upon a certain day, to wit, the 25th day of June, 1915, they are bound to prove to your satisfaction, beyond a reasonable doubt, that such offense was committed by the defendant at the time and place testified to by the witnesses in this case, and in the manner and form as charged in the indictment, before you can find the defendant guilty. [122]

27.

The jury are instructed that evidence has been introduced on the part of the prosecution for the purpose of proving that at other times prior to the 25th day of June, 1915, the time of the alleged offense upon which they rely for a conviction, the defendant had sexual intercourse with the witness Grace Carey, and the jury are further instructed that you cannot convict upon any of these previous offenses, although you may believe beyond a reasonable doubt that they occurred as testified to by the witness Grace Carey, for the reason that the defendant is not upon trial for those offenses, or any of them; the only purpose for which you can consider such evidence, if you believe the same to be true, is upon the question of the

design or intent of the defendant, and as bearing upon the likelihood or probability of the defendant having committed the offense charged in the indictment, and for no other purpose.

28.

The charge of rape against a person is easy to make, difficult to prove, and more difficult to disprove, and in considering a case of this kind, it is the duty of the jury to carefully and deliberately consider, compare and weigh all the testimony, facts and circumstances bearing upon the acts complained of, and the utmost care, intelligence and freedom from bias should be exercised by the jury in the consideration thereof. [123]

29.

Your duty to society and to this defendant obligates you to give your earnest and careful attention to every feature of the case now on trial before you, so that the defendant may not be unjustly convicted nor wrongfully acquitted.

Under the solemnity of your oaths as jurors, you must consider all of the evidence in the case, under the instructions of the Court, and upon the law and the evidence you must reach, if you can, a just verdict, which the law and the rights of this defendant demand of you. And, in determining the guilt or innocence of the defendant under the evidence, it becomes your duty to accept the law of the case as laid down in these instructions.

No juror, from mere pride of opinion hastily formed or expressed, should refuse to agree, nor, on the other hand, should he surrender any conscientious views founded on the evidence. It is the duty

of each juror to reason with his fellows concerning the facts, with an honest desire to arrive at the truth, and with a view of arriving at a verdict. It should be the object of all the jury to arrive at a common conclusion, and to that end to deliberate with calmness.

In conformity with the law, I have prepared two forms of verdict which you will take with you to your jury-room, and, when you shall have unanimously agreed upon a verdict, you will sign, by your foreman, that form upon which you have so agreed, and return the same into court as your verdict, and destroy the other form. [124]

The forms are;

1. Guilty as charged in the indictment.
2. Not guilty.

I now hand you the written instructions which I have just read to you, for your guidance, together with the indictment in the case, both of which you will return into court with your verdict.

Given at Fairbanks, Alaska, March 24th, 1916.

CHARLES E. BUNNELL,
District Judge.

That at the conclusion of the reading by the Court of the foregoing instructions to the jury, and before the jury retired to deliberate upon their verdict, the defendant, in the presence of the jury, in open court, took the following exceptions: [125]

Defendant's Exceptions to Instructions to Jury.

The defendant excepts to the refusal of the Court to give instruction Number 1 as prepared, proposed

and requested by the defendant, which exception is allowed by the Court.

The defendant excepts to the refusal of the Court to give instruction Number 2 as prepared, proposed and requested by the defendant, which exception is allowed by the Court.

Defendant excepts to instruction Number 20 given by the Court, for the reason that the same is involved, is not a fair and clear statement of the law, and does not state the law; which exception is allowed by the Court.

Defendant excepts to instruction Number 23 given by the Court, for the reason that the same is involved, is not a fair and clear statement of the law, and does not state the law; which exception is allowed by the Court.

Defendant excepts to instruction Number 24 given by the Court, for the reason that the same is involved, is not a fair and clear statement of the law, and does not state the law, which exception is allowed by the Court. [126]

Defendant excepts to instruction Number 25 given by the Court, for the reason that the same is involved, is not a fair and clear statement of the law, and does not state the law; which exception is allowed by the Court.

Defendant excepts to the instructions as a whole, because the said instructions are misleading, incomplete, involved, and do not state the law; which exception is allowed by the Court. [127]

Instructions Requested by Defendant.

INSTRUCTION NO. 2, REQUESTED BY DEFENDANT.

The jury are instructed that evidence has been introduced on the part of the prosecution for the purpose of proving that at other times prior to June 25th, 1916, the time of the alleged offense upon which they rely for a conviction, the defendant had sexual intercourse with the witness Grace Carey, and the jury are further instructed that you cannot convict upon any of these previous offenses, although you may believe beyond a reasonable doubt that they occurred as testified to by the witness Grace Carey, for the reason that the defendant is not upon trial for those offenses, or any of them; and the only purpose for which you can consider such evidence, if you believe the same to be true, is upon the question of the design or intent of the defendant and as bearing upon the likelihood or probability of the defendant having committed the offense charged in the indictment, and for no other purpose. [128]

[Caption and Title.]

Motion in Arrest of Judgment.

Comes now the defendant above named, and moves the Court for an order that no judgment be rendered against the defendant herein upon the verdict of guilty returned by the jury against him upon the 25th day of March, 1916, notwithstanding said verdict,

upon the ground and for the reason that the indictment herein does not state facts sufficient to constitute a crime, as is more fully and particularly set forth in the demurrer to said indictment filed herein, to which reference is hereby made and made a part of this motion.

LEROY TOZIER,
Attorney for Defendant.

Service of the foregoing motion admitted and a true copy thereof received this, 27th day of March, 1916.

R. F. ROTH,
U. S. Attorney. [129]

[Caption and Title.]

Motion for a New Trial.

Comes now the defendant in the above-entitled action and moves the Court to set aside the verdict of "Guilty" rendered herein against the defendant, upon the 25th day of March, 1916, and grant a new trial herein for the following reasons:

I.

Misconduct of the United States Attorney in his address to the jury in this case by using the following language:

> "You noticed that I challenged the statement of Mr. Tozier that Grace Carey testified that the last time that she was at the Callahan house was on the 25th day of June. I made that challenge of those statements, because my understanding was that she testified that that was the last time she had sexual intercourse with Dan

Callahan, and I have not any doubt at all but that is what was intended, because there is no doubt but what Grace Carey had been to Callahan's house many times since. That is an immaterial matter. There is no doubt but what she had been there many times since. And if I had understood that statement, why, of course, I would have had that corrected by testimony, because, if she had been there later—"

For the reason that the language of the prosecuting attorney above quoted, is improper in any criminal case; not based upon any evidence or reasonably deducible therefrom, and is calculated to inflame and prejudice the minds of the jury, and by reason of the said language on the part of the said prosecuting attorney, the defendant was prevented from having a fair trial. [130]

II.

Error of the Court at the trial and excepted to by the defendant in the admission of evidence, to wit:

For the error of the Court in overruling the objection of the defendant to the admission of the testimony of Laura Herrington; for the reason that the same was incompetent, immaterial and wholly inadmissible for any purpose or upon any correct theory applicable to this case, and was purely hearsay, and not binding upon this defendant; and to which overruling of the defendant's objection the defendant duly excepted.

III.

For error of the Court in overruling defendant's objection to the admission of the testimony of the witness Laura Herrington as to a conversation be-

tween the witness Grace Carey and the witness Laura Herrington, and particularly statements made by said Grace Carey to said Laura Herrington immediately after the alleged commission of the alleged offense, regarding where she, said Grace Carey, had been and certain money, to wit, the sum of three dollars she then had, and as to when and how she obtained the same; because said conversation and said statements were hearsay and not binding upon this defendant. To the admission of which testimony the defendant objected; which objection was overruled, to which the defendant duly excepted, as will more fully appear by the official stenographer's notes and record of the testimony of the said Laura Herrington.

IV.

For the error of the Court in his ruling upon the motion of defendant to strike out all the testimony of the witness Laura Herrington in this case; which motion was duly made by the defendant and overruled by the Court, and to which ruling the defendant then and there excepted. [131]

V.

For the error of the Court in refusing to read and give to the jury instructions Nos. One and Two, prepared and requested by the defendant, to be given by the Court in its charge to the jury; to which refusal the defendant duly excepted; which exceptions were allowed by the Court.

VI.

For error of the Court in giving and reading to the jury instructions Nos. 20, 23, 24 and 25 of the Court's

charge to the jury, for the reasons set out in defendant's exceptions to said instructions, which exceptions to said instructions were allowed by the Court.

VII.

Insufficiency of the evidence to justify the verdict of guilty, and because said verdict is against the law.

VIII.

For the reason that because of said errors of law occurring at the trial and excepted to by the defendant, and which more fully appears in the shorthand notes taken at the trial, the defendant herein was prevented from having a fair and impartial trial.

LEROY TOZIER,
Attorney for Defendant.

Service of the foregoing motion for a new trial admitted and a true copy thereof received this 27th day of March, 1916.

R. F. ROTH,
U. S. Attorney. [132]

[Caption and Title.]

Order Allowing and Certifying Bill of Exceptions.

United States of America,
Territory of Alaska,—ss.

I, the undersigned, presiding Judge at the trial of the above-entitled action, do hereby certify that the above and foregoing contains a full, true and accurate transcript of all the testimony adduced and heard at the trial thereof on the issues joined, with the objections and exceptions of said defendant to the reception and rejection of evidence, the typewritten charge of the Court to the jury and the exceptions to

instructions to the jury taken by the defendant, the motions in arrest of judgment and for a new trial, and all other matters and things occurring thereat and not otherwise of record.

And I now sign and allow the same as and for a true and correct bill of exceptions of all matters contained therein, and order the same to be refiled by the clerk of this court, and when so filed, to be and become part of the record in this cause.

Dated at Fairbanks, Alaska, this 6th day of May, 1916.

CHARLES E. BUNNELL,
District Judge.

Entered in Court Journal No. 13, page 549. [133]

[Indorsed]: Filed May 6, 1916. [134]

[Caption and Title.]

Acknowledgment of Service.

Service of the foregoing bill of exceptions admitted and a true copy thereof received this, 1st day of May, 1916.

R. F. ROTH,
United States District Attorney. [135]

[Indorsed]: Filed in the District Court, Territory of Alaska, 4th Div. May 1, 1916. J. E. Clark, Clerk. By Sidney Stewart, Deputy.

Refiled in the District Court, Territory of Alaska, 4th Div. May 6, 1916. J. E. Clark, Clerk. By Sidney Stewart, Deputy. [136]

[Caption and Title.]

Order Allowing Defendant's Proposed Bill of Exceptions.

2:00 P. M.

Now, on this day, Harry E. Pratt, Assistant United States Attorney, appearing in behalf of the Government and Leroy Tozier, Esq., appearing in behalf of defendant and this being the time set for hearing on defendant's proposed Bill of Exceptions herein, and counsel for the Government having been duly served with a copy thereof, and making no objection thereto, said Bill of Exceptions is hereby allowed as proposed.

CHARLES E. BUNNELL,
District Judge. [137]

[Caption and Title.]

Petition for Writ of Error.

To the Honorable Justices of the United States Circuit Court of Appeals for the Ninth Judicial Circuit, and the Honorable CHAS. E. BUNNELL, Judge of the District Court for the Territory of Alaska, Fourth Judicial Division.

Comes now Daniel Callahan, the defendant below and plaintiff in error, and complains that in the record and proceedings had in the said action, and also in the rendition of the sentence and judgment in the above-entitled action in the said District Court, at the February term, 1916 thereof, against the said defendant below and plaintiff in error, Daniel Cal-

lahan, on the 11th day of April, 1916, manifest error having happened to the great damage of the said defendant below and plaintiff in error, whereof the said defendant below and plaintiff in error prays the Honorable Judges for the allowance of a writ of error, and for an order fixing the amount of bond to cover costs and damages in the said action, and for such other orders and processes as may cause the same to be corrected by the United States Circuit Court of Appeals for the Ninth Judicial Circuit.

Dated May 6, 1916.

LEROY TOZIER,

Attorney for Defendant Below and Plaintiff in Error.

Allowed:

CHARLES E. BUNNELL,

Judge.

[Endorsed]: Filed May 6, 1916. [138]

[Caption and Title.]

Order Allowing Petition for Writ of Error.

Now, on this day, Harry E. Pratt, Assistant United States Attorney, appearing in behalf of the Government, and Leroy Tozier, Esq., appearing in behalf of the defendant, and defendant having filed petition for writ of error in this cause, said petition is hereby allowed by the Court.

CHARLES E. BUNNELL,

District Judge. [139]

[Caption and Title.]

Assignment of Errors on Writ of Error.

The defendant below and plaintiff in error, in this action, in connection with his petition for writ of error, makes the following assignment of errors which he avers occurred upon trial of the action, to wit:

I.

The Court erred in denying the motion of defendant to set aside the order made by the Court on Wednesday, March 22d, 1916, at 10 o'clock A. M., that the defendant be allowed an open trial, to the denial of which motion the defendant duly excepted and the exception was allowed; for the reason that by virtue of said order the defendant was denied and did not have, a fair trial.

II.

The Court erred in denying the application of defendant for permission to further examine the juror Patton, made by the defendant at the hour of 2 P. M., March 23d, 1916, after the jury had been sworn to try the case, which application occurred as follows:

> Mr. TOZIER.—I would like permission to further examine juror Patton—a few questions is all.
>
> Mr. ROTH.—We object, because he has already been sworn to try the case.
>
> Mr. TOZIER.—It is a matter that comes to my knowledge since 12 o'clock—since the recess.
>
> Mr. ROTH.—The other jurors have been excused and it is a little late. [140]

The COURT.—A juror may be examined any time as to his general qualifications. If you desire to examine him in the matter of his citizenship, or something of that kind—

Mr. TOZIER.—That is not it, your Honor. That is not the matter I want to examine him about.

Mr. ROTH.—We object to it now, because the rest of the venire is excused and the jury is sworn to try the case.

(Objection sustained. Defendant excepts and is allowed an exception.)

For the reason that further examination of a juror upon matters coming to the knowledge of defendant or his counsel, touching the qualifications of the juror, after the juror has been sworn to try the case, and particularly before evidence is introduced, is not a matter solely in the discretion of the Court but a substantial right of the defendant.

To the denial of which said application the defendant duly excepted and exception was allowed by the Court.

III.

The Court erred in overruling the objection of defendant, made at the beginning of the testimony of Grace Carey, to the introduction of any evidence in this case; which objection was duly made by the defendant, overruled by the Court and exception thereto allowed by the Court.

IV.

The Court erred in admitting the evidence of the witness Laura Herington, and particularly that part

of the said witness Laura Herington which is as follows:

Q. Just tell what occurred between you and Grace at that time.

(Defendant objects as incompetent, irrelevant and immaterial, not tending to prove or disprove any of the facts in this case. Objection overruled, and defendant asks and is given an exception.) [141]

Q. Go ahead now and state what was said and occurred between you and Grace at that time.

A. She showed me the money he gave her.

(Defendant moves to strike answer, plaintiff consents, and the Court strikes out the answer.)

Q. Just state what Grace said to you, and what was done.

(Defendant objects, unless it is shown more clearly that it has a bearing upon the actions of this defendant and the witness Grace Carey who was formerly upon the stand; and in any event it would only be hearsay, and not binding upon the defendant; that it is not corroborating evidence. Objection overruled, and defendant asks and is given an exception.)

Q. Go ahead.

A. She told me she did something with Dan to get the money.

(Defendant moves to strike answer. Motion denied and defendant asks and is given an exception.)

Q. What money are you referring to?

A. The money he gave her.

(Defendant objects to the answer and moves that it be stricken. Motion denied, and defendant asks and is given an exception.)

Q. What did she show to you? Did she show you anything there?

(Defendant objects as leading and suggestive. Objection overruled. Defendant excepts. Exception allowed.)

Q. Answer the question: Did she show you anything? A. Yes.

Q. What did she show you?

(Defendant makes the same objection. Objection overruled. Defendant asks and is given an exception.)

A. Three dollars.

Q. What did she say to you—the exact words that she said to you when she showed you the three dollars?

(Defendant objects as incompetent, irrelevant and immaterial. Objection overruled, and defendant asks and is given an exception.)

Q. Now, state the exact words she said to you. [142]

(Defendant makes same objection; same ruling and exception allowed.)

A. She said he did something to her.

Q. Is that what she said. Is that the exact language she used? A. No.

Q. I want the exact language she used.

(Same objection by defendant; same ruling and exception.)

Q. State the exact language she used.

A. She said that Dan had pushed her.

(Defendant objects and moves to strike answer. Objection overruled, motion denied and an exception allowed.)

Q. Did you ever have a conversation with Dan Callahan, the defendant in this case, in his house, about Grace Carey? A. Yes.

(Defendant objects for the further reason that it does not tend to prove any of the facts at issue in this case or disprove them. Objection overruled and defendant asks and is given an exception.)

Q. When was that? How old were you when that conversation took place?

A. Twelve years old.

Q. Just tell this jury what Dan Callahan said to you at that time about Grace Carey?

A. He said he did that to Grace and that she was not afraid.

(Defendant moves to strike the answer as not responsive to the question. Motion denied, and defendant asks and is given an exception.)

V.

The Court erred in sustaining the objection of plaintiff to the cross-examination of the witness Laura Herington, and particularly that part of said cross-examination which is as follows:

Q. You and Grace have talked this thing over quite a number of times, haven't you, Laura?

A. Yes. [143]

Q. Talked it over as to what you were going to testify to here and as to what she was going to testify to? A. Yes.

Q. You have talked it over with Mr. Roth too, haven't you? A. Yes.

Q. And you girls also talked over about the money you were going to get for coming here, witness fees and such as that? A. Yes.

Q. That you were getting a nice thing out of these cases. You and Grace had that talk together?

(Plaintiff objects as irrelevant, incompetent and immaterial. Objection sustained. Defendant excepts, and asks and is given an exception.)

VI.

The Court erred in denying the motion of defendant, made at the close of the Government's case, to strike out the evidence of the witness Laura Herington, which is as follows:

Mr. TOZIER.—The defendant now moves that the evidence of the witness Laura Herington, in so far as the same relates to any conversation she may have had with the witness Grace Carey, testified as having occurred on the 25th day of June, 1915, regarding the relation or relations of the witness Grace Carey with this defendant, Daniel Callahan, as having occurred on the said 25th day of June, and in particular that part of the conversation occurring between the witness Laura Herington and the witness Grace Carey wherein the witness Laura Herington testified that Grace Carey showed her, Laura Herington, three dollars and made the remark that she had received the three dollars from this defendant, Dan Callahan, and that she said Dan

Callahan had pushed her, should be stricken from the record and the jury instructed to disregard said testimony, for the reason that the same is mere gossip, hearsay and could have no bearing upon this case, and serves to prejudice the rights of the defendant, [144] Dan Callahan, in this case.

(Motion denied. Defendant asks and is given an exception.)

VII.

The Court erred in sustaining the objection of the plaintiff to the introduction of the following testimony of the witness and defendant, Daniel Callahan, as follows:

Q. Mr. Callahan, do you think of anything else that you want to testify to at this time that I have not asked you about?

Mr. ROTH.—That is objected to—(Interrupted).

Mr. TOZIER.—Just a moment. (Continuing)—that appeared in the testimony of any of the witnesses that appeared upon the stand here yesterday?

(Plaintiff objects as irrelevant, incompetent and immaterial, too indefinite. Objection sustained and the Court states that Mr. Tozier may examine the testimony and see if he desires to ask any questions. Defendant asks and is allowed an exception.)

VIII.

The Court erred in reading and giving to the jury instruction numbered 23, as follows:

"You are instructed that if you believe, beyond a reasonable doubt, that the witness Grace Carey told the witness Laura Herington of the act of sexual intercourse alleged to have been committed upon the said Grace Carey by the defendant, and that said Laura Herington was the first person she met after said alleged act, and that it was the said Grace Carey's first opportunity to tell any person, and that said statement was made immediately after leaving defendant's house after said alleged act of sexual intercourse was completed, then that may be considered by you as a corroborating circumstance tending to sustain the truth of the statement of the said Grace Carey as to what had just transpired between her and the defendant."

To which instruction the defendant duly excepted and the exception was allowed by the Court.

IX.

The Court erred in reading and giving to the jury instruction numbered 24, as follows:

You are instructed that in the case of rape it is not essential that the one upon whom the rape is alleged to have been committed should be corroborated by the testimony of other witnesses as to the particular act constituting the offense; and if the jury believe, beyond a reasonable doubt, from the testimony of the witness, Grace [145] Carey, that the corroborating circumstances and facts testified to by other witnesses, that the defendant did commit the crime as charged, the law would not require that the wit-

ness Grace Carey should be corroborated by other witnesses as to what transpired at the immediate time and place when it is alleged the crime was committed."

To which instruction the defendant duly excepted and the exception was allowed by the Court.

X.

The Court erred in giving and reading to the jury instruction numbered 25, as follows:

"You are instructed that if you believe from the evidence in this case, beyond a reasonable doubt, that the defendant, Daniel Callahan, being then and there over the age of twenty-one years, at Fairbanks, in the Fairbanks Precinct, Fourth Judicial Division, Territory of Alaska, on the 25th day of June, 1915, did have carnal knowledge of Grace Carey and did penetrate the female organ of Grace Carey with his male member or penis, and the said Grace Carey was then and there a female under the age of sixteen years, and was not then and there the wife of said defendant, Daniel Callahan, you will find the defendant guilty of the crime of rape, as charged in the indictment."

To wrich instruction the defendant duly excepted and the exception was allowed by the Court.

XI.

The Court erred in refusing to give instruction numbered —— prepared and requested by the defendant to be given to the jury, as follows:

"The jury are instructed that evidence has been introduced on the part of the prosecu-

tion for the purpose of proving that at other times prior to the 25th day of June, 1915, the time of the alleged offense upon which they rely for a conviction, the defendant had sexual intercourse with the witness, Grace Carey, and the jury are further instructed that you cannot conflict upon any of these previous offenses, although you may believe beyond a reasonable doubt that they occurred as testified to by the witness Grace Carey, for the reason that the defendant is not upon trial for those offenses, or any of them, and the only purpose for which you can consider such evidence, if you believe the same to be true, is upon the question of the design or intent of the defendant and as bearing upon the likelihood or probability of the defendant having committed the offense charged in the indictment, and for no other purpose."

XII.

The Court erred in denying the motion of the defendant in arrest of judgment; to which denial the defendant duly excepted **[146]** and the exception was allowed by the Court.

XIII.

The Court erred in denying the motion for a new trial, duly made by the defendant, to which denial the defendant excepted and the exception was allowed by the Court.

XIV.

The Court erred in pronouncing sentence and rendering judgment against the defendant.

WHEREFORE, defendant below and plaintiff in error prays that the judgment of the District Court may be reversed.

LEROY TOZIER,
Attorney for Defendant.

Service admitted and true copy received this 6th day of May, 1916.

R. F. ROTH,
United States District Attorney.

[Endorsed]: Filed May 6, 1916. **[147]**

[Caption and Title.]

Writ of Error.

The President of the United States, to the Honorable, the Judge of the District Court for the Territory of Alaska, Fourth Judicial Division, GREETING:

Because in the records and proceedings, as also in the rendition of the sentence and judgment of a plea which is in said District Court before you, between the United States of America, plaintiff and Daniel Callahan, defendant and plaintiff in error, as by his complaint appears.

We, being willing that said error, if any have been, should be duly corrected and full and speedy justice done to the parties aforesaid in this behalf, do command you if judgment be therein given that then, under your seal distinctly and openly, you send the record and proceedings aforesaid with all things concerning the same to the United States Circuit Court of Appeals for the Ninth Judicial

Circuit together with this writ so that you have the same at the City of San Francisco, in the State of California, on the 5th day of June, 1916, in the said Circuit Court of Appeals to be then and there heard, that the record and proceedings aforesaid being inspected, the said Circuit Court of Appeals may cause to be done thereof to correct that error, what of right and according to law and custom of the United States should be done.

WITNESS the Honorable EDWARD D. WHITE, Chief Justice of **[148]** the Supreme Court of the United States, of America, this 6th day of May, 1916.

[Seal] J. E. CLARK,
Clerk of the District Court for the Territory of Alaska, Fourth Judicial Division.

Allowed:

CHARLES E. BUNNELL,
District Judge. **[149]**

[Caption and Title.]

Order Allowing Writ of Error.

Now, on this day, Harry E. Pratt, Assistant United States Attorney, appearing in behalf of the Government, and Leroy Tozier, Esq., appearing in behalf of the defendant and defendant's petition for writ of error herein having been allowed by the Court, said writ of error in this cause, entitled In the United States Circuit Court for the Ninth Circuit was made and allowed by the Court.

CHARLES E. BUNNELL,
District Judge. **[150]**

[Caption and Title.]

Order Permitting Withdrawal of Motion for Order Allowing Supersedeas Bond.

Now, on this day, Harry E. Pratt, Assistant United States Attorney, appearing in behalf of the Government and Leroy Tozier, Esq., appearing in behalf of the defendant, and defendant having filed a motion for order allowing supersedeas bond herein, now requests permission of the Court to withdraw said motion, and there being no objections,

It is ordered that said motion may be withdrawn.

CHARLES E. BUNNELL,
District Judge.

Clerk's Note: The above order should have been entered before Order Allowing Defendant's Proposed Bill of Exceptions entered on page 549. **[151]**

[Caption and Title.]

Order Denying Motion for Order Allowing Supersedeas and Fixing Amount of Bond.

Now, on this day, Harry E. Pratt, Assistant United States Attorney, appearing in behalf of the Government and Leroy Tozier, Esq., appearing in behalf of the defendant, and defendant now filing a motion in this cause for order allowing supersedeas and fixing amount of bond, and the Court having considered said motion,

It is ordered that said motion be, and the same is, hereby denied.

CLERK'S NOTE: Defendant notes an exception to above ruling, which exception is allowed.

CHARLES E. BUNNELL,
District Judge. **[152]**

[Caption and Title.]

Citation on Writ of Error.

To R. F. ROTH, United States District Attorney, District of Alaska, Fourth Judicial Division, GREETING:

YOU ARE HEREBY CITED AND ADMONISHED on behalf of the plaintiff in error, Daniel Callahan, to be and appear at a term of the United States Circuit Court of Appeals for the Ninth Judicial Circuit, to be holden in the City of San Francisco, in the State of California, on the 5th day of June, 1916, pursuant to a writ of error filed in the Clerk's office of the District Court for the Territory of Alaska, Fourth Judicial Division, wherein Daniel Callahan is plaintiff in error and the United States of America is defendant in error, to show cause, of any there be why the sentence and judgment in said writ of error mentioned should not be corrected and speedy justice should not be done to the plaintiff in error in that behalf.

Dated and done in open Court this 6th day of May, 1916.

[Seal] CHARLES E. BUNNELL,
District Judge.

Service of the above Citation, by receipt of a true

copy thereof, is hereby admitted this 6th day of June, 1916.

R. F. ROTH,
U. S. District Attorney **[153]**

[Caption and Title.]

Motion for Order Extending Time to File Record and Docket Cause in Appellate Court.

Comes now the above-named plaintiff in error, Daniel Callahan, by his attorney, Leroy Tozier, and moves the Court for an order enlarging and extending the time within which the transcript in the above-entitled case should be filed in the above-entitled court, at San Francisco, California, until the 31st day of August, 1916, for the reason that the transmission of mail matter between Fairbanks, Alaska, and San Francisco, aforesaid, is subject to great delay and uncertainty.

Dated, May 13, 1916.

LEROY TOZIER,
Attorney for Plaintiff in Error.

Service admitted May 13, 1916.

R. F. ROTH,
United States District Attorney.

[Indorsed]: Filed May 13, 1916. **[154]**

[Caption and Title.]

Order Extending Time to File Record and Docket Cause to August 31, 1916.

This matter coming regularly on to be heard upon the application of Daniel Callahan, the above-

named plaintiff in error, for an order extending the time within which the transcript in this case should be filed in the said United States Circuit Court of Appeals, at San Francisco, California, such extension being based upon the delays and uncertainties of the transmission of mail matter between Fairbanks, Alaska, and San Francisco, California, said plaintiff in error being represented by Leroy Tozier, his attorney, and said defendant in error being represented by R. F. Roth, United States District Attorney, the Court being advised in the premises,—

IT IS ORDERED that the time within which the transcript in this case should be filed in the United States *Circuit of* Appeals, at San Francisco, California, be and the same is hereby enlarged and extended to August 31, 1916.

Done in open court this 13th day of May, 1916.

CHARLES E. BUNNELL,

Judge of the District Court for Alaska, Fourth Judicial Division.

Service admitted May 13th, 1916.

R. F. ROTH,

United States District Attorney for Alaska, Fourth Judicial Division.

Entered in Court Journal No. 13, page 559. **[155]**

[Caption and Title.]

Certificate of Clerk U. S. District Court to Transcript of Record.

I, J. E. Clark, Clerk of the United States District Court, Territory of Alaska, Fourth Division, do

hereby certify that the foregoing consisting of one hundred and fifty-five pages, numbered from 1 to 155, inclusive, constitutes a full, true and correct transcript of the record on writ of error in cause No. 713–Criminal, entitled, United States of America, Plaintiff, vs. Daniel Callahan, Defendant, wherein Daniel Callahan is plaintiff in error, and the United States of America is defendant in error, and was made pursuant to and in accordance with the praecipe of the plaintiff in error filed in this action and made a part of this transcript and by virtue of the citation issued in said cause and is the return thereof in accordance therewith.

And I do further certify that the index thereof, consisting of pages 1 to 3, is a correct index of said transcript on writ of error; also that the costs of preparing said transcript and this certificate, amounting to Fifty-seven and 80/100 ($57.80) Dollars, has been paid to me by counsel for plaintiff in error in said action.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of said court this fifth day of August, 1916.

[Seal] J. E. CLARK,
Clerk of the District Court, Territory of Alaska, 4th Div.

By Sidney Stewart,
Deputy Clerk.

[Endorsed]: No. 2845. United States Circuit Court of Appeals for the Ninth Circuit. Daniel Callahan, Plaintiff in Error, vs. The United States of America, Defendant in Error. Transcript of Record. Upon Writ of Error to the United States District Court of the Territory of Alaska, Fourth Division.

Filed August 22, 1916.

F. D. MONCKTON,

Clerk of the United States Circuit Court of Appeals for the Ninth Circuit.

By Paul P. O'Brien,

Deputy Clerk.